THE PUBLIC INTEREST DEPARTMENT, LEGAL AID MANITOBA: AN EVALUATION

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THE PUBLIC INTEREST DEPARTMENT, LEGAL AID MANITOBA: AN EVALUATION

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FORWORD

1. The Development of Public Interest Advocacy in Canada

The Public Interest Law Department of Legal Aid Manitoba occupies a unique position within a recent historical development: public interest advocacy. The history, the present state and the future of public interest advocacy in Canada has recently been explored in a study by Kim Roberts (1984) conducted under the aegis of the Department of Justice. (We shall borrow extensively from Roberts' report in the ensuing paragraphs.)

In the U.S., as Roberts describes it, public interest law developed in two "waves". The first wave was largely defensive in nature and was spear-headed by groups such as the American Civil Liberties Union ("ACLU") and the National Association for the Advancement of Colored People ("NAACP"). Both the ACLU and the NAACP, as well as similar groups, used a network of volunteer lawyers as well as staff counsel to pursue their reform goals.

The second wave, comprising the last two decades in the U.S., has seen funding for public interest advocacy come from a variety of sources including governments and private foundations. This has resulted in an expansion of public interest law to include a vast number of issues and a larger group of practitioners.

According to Roberts, neither of these U.S. waves has begun to roll over Canada until quite recently. The reasons for the difference include the fact that community and citizen organizations with a public interest focus have not developed momentum or support in

Canada to the extent that they have in the U.S. Second, Canada lacked until recently a constitutionally-entrenched Charter of Rights to compare with the U.S. Bill of Rights. Reformers therefore had to rely more upon political initiatives rather than litigation. Third, well-funded private foundations and governments in Canada have not set a high priority on public interest advocacy. Therefore public interest law firms, and legal aid to promote public interest advocacy, have not flourished in Canada as they have in the U.S. And, finally, the procedural law of Canada makes class actions difficult if not often impossible and otherwise denies standing to groups who wish to pursue public interest issues in the courts.

In spite of these substantial impediments, public interest advocacy in Canada has recently begun to gain some momentum. Public interest organizations have increased their capacity by creating panels of volunteer lawyers or, in some cases as where federal funding is provided, by hiring staff counsel. Public interest law firms have been established to advocate consumer and environmental issues. (See Part V for further information on these firms.) Funding for these firms has come from federal sources and from provincial law foundations. In Ontario the provincial government has extended its legal aid plan through "special interest" community clinics for the disabled, tenants, and children. Environmental law groups can call on the resources of the Canadian Environmental Law Association. British Columbia's legal services plan, at least until recently, included offices specifically to deal with the legal problems of Native people and prisoners.

In Manitoba, as in some other provinces, public interest advocacy services have to a limited extent been available to economically disadvantaged groups either by support and referral to the private bar, or through staff lawyers. As Roberts points out (at vii),

> ...[Both] models are unable to meet more than the immediate needs of the disadvantaged. This is because limited resources result in a heavy caseload with little or no opportunity to specialize in a particular area or to conduct the research necessary for effective law reform.

In addition to the public interest advocacy resources cited above, the Department of Justice has funded or partially funded the following:

(a) The Mental Patients' Advocate Program;
(b) The Farmworkers' Legal Services Project;
(c) The Advocacy Resource Centre for the Handicapped.

All of these public interest law resources have attempted to combine direct legal services with law reform, test case litigation and public legal education. Unlike the Public Interest Department in Manitoba, however, they have focused upon the needs of a group of citizens or a set of issues relatively restricted in nature. As will be seen, the goals of the Public Interest Department are comprehensive and the "target population" includes all of those people served by traditional legal aid services. Therefore, the Department can be said to be unique in Canada.

Concomitant with the development of public interest advocacy, Roberts suggests (at 2-3), have been political changes: an attempt to foster greater openness in Governmental decision-making and an expectation for wide consultation. The use by citizen-groups of such tactics as lobbying, petitions, and the presentation of briefs has become widely accepted and even encouraged by governments in the developing political culture. The goal of a "participatory

democracy" has to a greater or lesser degree been adopted by all levels of government in Canada. As with most goals, there are costs involved in realizing it. Some citizens are more able to afford to participate than others; and some, without some scheme to assist them, cannot have an effective voice. As counsel for a utility company in Manitoba (a lawyer frequently "on the other side") put it, "The Public Interest Department is a logical extension of legal aid and I've always been bullish on legal aid. At this stage of the game, if it disappeared we'd have to replace it with something else." If lawyers are necessary to the effectiveness of democractic institutions then some means must exist for those who cannot afford them to be able to do so.

Roberts (1984, 32) has suggested that the establishment of the Public Interest Department constitutes an important step in the evolution of the provision of public interest law services in Manitoba:

> Prior to 1977, the NDP government had experimented with Citizens Advisory Committees which exercised some control over individual clinics. It was initially anticipated that the involvement of the CAC's would mean increased public interest advocacy by clinic lawyers....[W]hen the money became limited, the public interest cases were the first to be dropped. The Manitoba Legal Aid system was not unique in this way. In 1977, when the Conservatives returned to government, the CAC's were dropped and few public interest cases were handled by the legal aid program. With the re-election of the NDP in 1982, 2 specific changes were implemented to ensure that public interest advocacy would remain one of the priorities of the province's legal services....

The two changes alluded to by Roberts are elaborated in this report. They are, legislative amendments to encompass public interest issues within the range of subsidized legal services, and the establishment of the Public Interest Department.

2. Terms of Reference for this Study

This evaluation proceeded in three overlapping stages. In the first stage the evaluator was required to assemble descriptive information using the literature and "dossiers" on major cases, as well as reports and other documents in the hands of the Public Interest Department (the "PID") or the Department of Justice. (Confidential documents could not, of course, be released to the evaluator without client consent.)

In addition to the brief overview of the development of public interest advocacy in Canada and the genesis of the PID in Manitoba presented above, the evaluator was directed to describe and discuss the mandate and objectives of the PID as well as the following:

- -administrative structure of the PID
- -the number and degree of complexity of public interest advocacy cases represented
- -public interest advocacy services delivered
- -method of delivery of public interest advocacy services
- -accessibility of public interest advocacy services to clients including timeliness and sources of referral
- -criteria employed to determine eligibility for public interest advocacy services
- -characteristics of client groups
- -patterns of acceptance and rejection for public interest advocacy services
- -characteristics of lawyers providing public interest advocacy services
- -case outcomes (where available)
- -effectiveness of use of resources

All of these points are covered in some fashion in Parts I and II of the Evaluation, though not necessarily in the order listed.

In Part I we begin by describing the PID and the larger structure of which it is a part - the scheme for legal aid in Manitoba. This is followed by analysis of case selection procedures including patterns of refusal. Finally, in an attempt to formulate evaluation criteria to be applied in an examination of public interest advocacy operations, we look closely at the PID's own objectives as well as a set of "focus questions" derived from "external" criteria found in the literature.

In Part II we give detailed study to nine major cases handled by the PID over the course of the evaluation period. Incorporated into Part II is material gained at a later - the second - stage of the evaluation.

Part III examines activities not covered in Part II, that is, those activities not forming part of formal representation of client groups. Included here are law reform activities, education efforts, and the "informal" (non-legal aid certificate) activities of PID staff. Part III also includes some "Stage 2" material.

In Stage 2 the evaluator was supposed to examine <u>results</u> through interviews and a review of documentation. What was the impact, the perceived usefulness, the quality of service rendered? In conducting this stage of the study the evaluator spoke to many

individuals and met with groups. In the case of interviews with members of client groups a "Checklist" (see Appendix "A") of questions was loosely followed, adapted to the peculiar circumstances of each case. In interviews with people other than members of client groups questions were asked of both a general and a specific nature. That is,respondents were asked about their particular experience with the PID and their general views concerning the value and advisability of having a publicly-funded public interest law office in Manitoba. As well as the information incorporated into Parts II and III, Stage 2 material is elaborated in Part IV.

Finally, in Part V we examine some critical issues involving PID operations and reach some conclusions of our own regarding the value and advisability of maintaining the PID.

PART I

INTRODUCTION

INTRODUCTION

In this Part the major features of the Public Interest Department ("PID") are considered. These include the administrative structure of the PID as well as the larger organization of which it is a part, its mandate, and the statutory and policy requirements under which it operates. Case selection procedures and possible biases are also considered. Finally, in a section on "Evaluation Criteria" the basis for the remainder of this evaluation report is set forth in detail. Central to the final section of this Part are a series of "Focus Questions" which shall be applied in a consideration of PID activities included in Parts subsequent.

ADMINISTRATIVE STRUCTURE

1. Legal Aid

The PID exists within the general framework of the Manitoba scheme of legal aid. The statutory basis for the Manitoba legal aid plan is found in The Legal Aid Services Society of Manitoba Act (the "Act") enacted in 1971 and subsequently amended. Legal Aid Manitoba ("LAM") was established as a corporate entity under the Act, separate from government and governed by an independent Board of Directors. By the language of the Act, LAM is known as "The Legal Aid Services Society of Manitoba". LAM began its operations in September of 1972.

Under the Act seven members of the Board are appointed by the Government of the day. A further three are chosen from a list prepared by the Law Society of Manitoba. One staff representative is elected by the LAM legal staff. Thus the Board is made up of eleven members including lawyers and lay persons.

The Board, as well as making general policy decisions, has direct responsibility for such things as budget and the employment of senior personnel. The most senior of personnel is the Executive Director who has overall responsibility for LAM administration.

For administrative purposes LAM is divided into four "Areas" each headed by an "Area Director" and three "Departments". Each Department is overseen by a Department Director. The PID is one of these Departments and Arne Peltz is its Director.

The Executive Director is assisted by a Deputy. The Deputy Executive Director has direct administrative responsibility for four Community Law Centres or "clinics" and all Areas with the exception of the Winnipeg Area. The Winnipeg Area is within the purview of the Executive Director. The Departments are similarly under the supervision of the Executive Director.

The Winnipeg Area - largest of the four Areas - and the central Administrative office are located in downtown premises in Winnipeg's business and commercial centre. The PID is located in the same place on the fourth floor of a multi-storeyed office block.

Manitoba's legal aid plan is a mix of "judicare" and "community legal services". That is, eligible clients (including groups) can, by securing a legal aid certificate, arrange for representation by a member of the private bar. Alternatively, clients can chose to be served by staff practitioners located in one of the clinics. In 1983-84 approximately 80% of the certificates issued were handled under the judicare component.

2. Public Interest Department

The PID is jointly funded by the Government of Manitoba (see Appendix "B") and the Department of Justice (see Appendix "C").

The PID Director is the lawyer responsible for the day to day administration and long term planning of the Department. His competence and general reputation will be acknowledged at several points in this report. As well he carries major responsibility

for the practice of public interest law. In this respect he is assisted by a staff lawyer who assists in providing legal services to groups, conducting test case litigation, preparing and presenting law reform proposals and briefs, among other duties. The position requires legal experience and, in particular, excellent research skills. The incumbent has both, plus general experience and education that make him well suited to public interest advocacy.

The PID also employs a paralegal whose duties are diverse. In many respects the paralegal does the same sorts of things that a litigation paralegal would do in any other law office: research on specific issues, organization of materials, contact with and preparation of witnesses. In the PID the paralegal also functions in some respects as a "community organizer" assisting client groups in establishing an organization structure and in exploring and facilitating activities both within and without the formal legal system to meet their goals and objectives. The incumbent has had experience as a union organizer and as an advocate in a "self-help" organization. By temperament and training he seems well suited to the position. Both the staff lawyer and the paralegal positions have been funded by the Department of Justice Special Projects Fund.

In addition to a secretary and the staff complement described above the PID has had provincial funding to hire students to work in the summer. Last year an economics student completed a major piece of research on a litigation file. The research became the centrepiece for soliciting expert opinions and potential expert

witnesses in a very complex case (see "Amaranth" infra). Law students have also been employed both summers included within the evaluation period. They tend to be used to assist in "special projects" such as the "Advocacy Manual" discussed elsewhere in this report.

3. Community Contacts

At the time that the PID applied for a Special Projects Grant it was intended that an "Advisory Group" be established. The Advisory Group was to be composed of representatives of public interest organizations and organizations with low income constituents. Its function was to have been to provide advice and recommendations on policy, priorities, and case selection. The plan to establish this group was never pursued. It was abandoned largely on the basis of the adverse experience LAM had had with similar advisory groups attached to Community Law Centres in the province.

To maintain the involvement of an advisory group requires a substantial investiture of staff time and energy - always in short supply and particularly so in the embryonic stages of a new project. Therefore, it was decided to solicit the input desired informally from public interest and low income organizations rather than through a structured Advisory Group. The PID has a list of "contact organizations" with which they have periodic correspondence. The list is appended to this report as Appendix "D".

4. Physical Location

Initially, as was stated in an application for Department of Justice

funding, it was anticipated that the location of the PID in the LAM central administrative office would limit client access. In terms of administration the only complaint voiced by PID staff is not a serious one: being "too close to management scrutiny". The advantages of access to central facilities and reduction of overhead expenses more than compensate for the loss of any benefit that might result from having, for example, a storefront location. Moreover, client access appears not to have been limited by the physical location of the PID.

5. "Informal" Structure of the PID

For six months of the evaluation period the position of staff lawyer was vacant. During another four months the time of the staff lawyer was limited by problems of health or, in the case of the last month, by unfinished business brought in from previous practise. The result has been a stretching of available resources and greater involvement on the part of the paralegal than might be expected given the job description stated above.

The Department, rather than sticking to a rigid division of labour, adopts a "team" approach. Cases are perceived as Departmental tasks and control over aspects of cases depends very much on what needs to be done and who at any given moment has the time. There appears to be a collegial atmosphere and a high degree of commitment among staff. Working hours are long but flexible.

The work is specialized and administrative officers - whose discretion in accepting or rejecting cases is wide - are close at hand. But cooperation must be balanced with fairness. The staff realizes that their potential informal control over the case selection process is great in these circumstances and they claim to "bend over backwards" to avoid prejudicing applications. Opinions must be prepared to accompany aid applications and they claim to make every effort to maintain standards of fairness in preparing them. The selection process is discussed in detail in the next section.

ELIGIBILITY AND SELECTION

1. Statutory Requirements

Amendments made in 1982 to The Legal Aid Services Society of Manitoba Act (the "Act") make specific provision for full or partial legal aid to groups and specify eligibility requirements. "Groups" are not defined within the Act, but section 3.1 provides that a group need not be an incorporated body to qualify for assistance. The absence of a clear, legal definition of "group" has not proven to be a problem in PID operation since "groups" with a common interest either have been incorporated prior to application, are encouraged to do so concomitant with application or they have had some recognized existence. Alternatively, if litigation involves a test case, group eligibility requirements are not applicable. Therefore, "groups" represented by the PID de facto are incorporated bodies or bodies with a basis for existence in legislation or in government policy. (See "Stony Mountain" and "Headingley Inmates' Council" cases, infra.)

Groups can obtain legal aid once a two-fold test is met: the matter in respect of which the group requires assistance must stem from a common objective or interest, and the matter must be one of "public interest". The thorny problems of defining a "common objective or interest" and an "issue of public interest" are avoided legislatively by relying upon the discretion of LAM. "Public interest" is given some small degree of specificity in the Act where it is provided that the concept shall include "any consumer or environmental issue".

LAM is also given discretion to determine the extent of support given. Various arrangements for full or partial aid can and have been made. For example, in a typical arrangement a group will agree to retain expert testimony as necessary while LAM provides all other legal services allowed by Regulation and internal policy.

Section 10.1 of the Act attempts to provide criteria for eligibility beyond the two-fold test noted above. Income levels are to be considered, as they are in the case of individual applications. If all members of the group would qualify as individuals for legal aid then group eligibility is apparently not a problem. Subsection 10.1(2) deals with the situation where group members are not universally, individually eligible for assistance. The Subsection provides as follows:

> A group submitting an application for legal aid under section 3.1 may be found eligible by the society notwithstanding that the members of the group or some of them would not be eligible as individuals, if the society determines
>
> (a) that the incomes of the members generally are at such a level that payment by the group of the legal costs in respect of which the application is submitted would work a serious hardship upon the group and would seriously hamper its activities; or
>
> (b) that the group does not have sufficient funds to pay the legal costs in respect of which the application is submitted.

Again the potential problems created by the ambiguity of terms are avoided by granting LAM discretionary powers.

On the basis of the provisions of the Act the potential for arbitrariness in granting or refusing aid to groups seems to be a danger. (LAM of course is obliged by the tenets of administrative

law to act fairly, judiciously and in good faith and its decisions are subject to potential judicial review in the same manner as other decisions made pursuant to statutory authority.)

2. Internal Policy and Procedure

In a directive distributed to groups and individuals in Manitoba (see Appendix "E" "Legal Aid for Groups") LAM outlined legislative provisions and elaborated its policy.

Legal aid to groups is clearly discretionary. While the PID and other staff lawyers offer advice to groups on an "informal" basis, and the PID does occasionally see fit actively to encourage applications to the Executive Director, a request for a group "formally" to receive representation and advice must be dealt with by the Executive Director or by the Board of Directors. If an initial negative decision is rendered by the Executive Director, an appeal lies to the Board. Preference is accorded groups composed of, or representing the interests of, low income people in keeping with the general mandate of LAM. The onus is upon the applicant group to show need. LAM then assesses the legal merits of the case (an opinion is prepared by the PID) and the aims, objects and activities of the group are examined. There must be "at least an arguable public policy position" and then a "priority scale" is applied with highest priority going to organizations whose objective is to assist low income people exclusively.

Other considerations also enter the decision to accept or reject an application. If groups opposing in interest apply, and both

meet the formal criteria for representation, and if one side already is receiving legal aid, then fairness dictates that the other side should receive assistance as well. (There is no policy, however, on which side, if any, should receive the specialized services of the PID in such a case.) The intrinsic legal importance of the issues involved also enters as a factor to be weighed. Practical concerns, such as the complexity of the issue involved relative to the time and resources available to the PID and to LAM generally, are also considered. The end result is that decisions cannot be accurately predicted on the basis of knowledge of the formal process. The process cannot be wholly "objective". Despite the potential for arbitrariness no decision has yet been subject to judicial review, albeit this may not be an adequate measure of "fairness" in the circumstances since the same economic factors that compel a group to seek aid to pursue an issue of public interest will also prevent the group from protesting denial of assistance. The PID itself has a degree of "informal" influence in determining whether or not formal application by a group is made and, if it is made, whether or not it is accepted. If aid is granted the PID also has influence over the assignment of the case to the Department or to the private bar. (Although, practically speaking, none of the private firms has the resources to handle public interest cases.) The Departmental limitations of time and resources are a perpetual problem. This difficulty is endemic to the practice of law, however. If they were clairvoyant the PID staff could, to a degree, control acceptance or refusal of cases so as to maintain a constant level of activity. In practise they

have little control over court dates and other externalities that produce fluctuations in the demands made upon staff. Staff range from being merely busy to frantic. Save in extremes, it is impossible to know whether a case is a "big one" and how many "big ones" will erupt at the same time. Some judgment must be made about future work load and present resources. This judgment of necessity enters the decision of whether or not a group applicant can effectively be served and whether it will be given legal assistance by the PID.

3. Influence of Consultant's Report

The PID commissioned a consultant's report in December, 1982. The questions put to the consultant asked for direction in identifying cases which might contribute to "fundamental political and economic changes" and help in singling out "priority areas of public interest work". While it is not clear that the consultant's report influenced the case selection procedure in any profound way, the fact that it was commissioned at all indicates an intention and a need to seek external support for internal policies.

The consulting report tries, without resolving the issue, to explicate the meaning of the "public interest". Then it goes on to discuss the "public policy bias" that results from the under-representation of some "public interest groups" in the political arena. The consultant reaches the tautological conclusion that government subsidized provision of legal services to groups who wish to influence "public policy" is itself in the "public interest" (at 10 and 17).

The PID was warned in the report, however, that the rules by which it must seek change are part and parcel of a socio-economic order that seeks to defend and maintain its own existence (at 18). Change of a "fundamental" nature cannot therefore be expected as an immediate consequence of PID activities. One might expect limited "incremental changes" from public interest law activities thereby contributing to the "overall solution of the problems of citizenship in liberal democracies" (at 33).

Upon this basis the consultant advised a "proper mix of cases" (at 23) so as to insure the political survival of the PID while at the same time not losing sight of ultimate goals, i.e. "fundamental" changes. "[T]he Department must adopt a certain number of cases that have broad popular appeal, as well as those specifically targeted toward the poor and other minority groups" (at 24). Public support is more certain when consumer and environmental issues are pursued, the consultant said, while the rights of the unemployed or other "economically disenfranchised groups" (at 26) deserve attention in spite of the fact that their causes may not be popular. "Public interest intervention on behalf of groups such as prisoners is important and ought to be justified on legal, moral and economic grounds" (at 26). On the other hand, while the rights of "political radicals" and "gay groups" was admitted to have some strategic value in the advancement of civil rights and liberties, the consultant suggested that adverse public reaction dictates that applications from such groups cannot be given top priority. Moreover, the consultant said, "Criticism

that the Department is entering into forbidden areas should be regarded as a clear sign that it is in fact accomplishing its [social change] goals" (at 28).

The consultant's report advises a "mix" of cases and the PID has in fact maintained such a "mix". It has not entered "forbidden" areas but "forbidden" groups may not have made application. It is unlikely, however, that the variety of cases came about because of the report. More probable is the suggestion that the report simply provided some degree of external support or verification of policies already in place. The case selection process is guided by a complex interaction of factors including legislation, internal policy, the political development of the community, historical events, and chance. The observed "mix" cannot therefore be totally a matter of design.

REFUSALS

1. Description

In addition to examining the cases for which certificates were current during the period of evaluation the evaluator sought information on those applications made for group service which were refused.

During the 1982-83 fiscal year the Executive Director's files indicate that 12 group applications were formally refused.

In the evaluation period covered herein the following cases were denied group legal representation:

(a) A community club applied for legal aid to defend a court motion to compel the organization to hold new elections. By the time the application was received the motion had been heard and a court order had been obtained. Therefore the application was refused.

(b) A provincial pet organization applied for legal counsel to draft and amend certain articles and by-laws of the corporation. Such services are not generally provided by LAM. In addition, the organization did not fit the criteria for group representation.

(c) Two committees comprised of parents of school children applied to be represented to complete a matter relating to school centralization and the quality of education. A court trial was pending. The applications were refused as each group had already retained private counsel and was requesting legal aid assistance because they had exhausted their existing sources of funds.

(d) A non-profit organization operating a private correctional facility applied for assistance to draft an offer to purchase real property. The group had some funds to pay legal fees and disbursements and therefore the application was rejected.

(e) A high school student council applied for representation to recover monies lost on a planned student social activity. The application was refused as neither the issue nor the group met the criteria for group legal aid.

(f) A rural Manitoba ethnic dance group applied for legal aid to incorporate. Such assistance is not generally given and, moreoever, the application did not meet statutory criteria.

In some instances groups made contact with the PID Director prior to application and the Director suggested informally that application would not be successful. In some cases these "informal refusals" could be referred elsewhere. The Director in each instance informed the potential applicant group of its legal right to make formal application and, if refused, to appeal to the LAM Board of Directors. A few of many possible examples of these "informal refusals" are as follows:

(a) A member of the private bar referred a possible test case involving sentencing procedures in the criminal courts. It was suggested that the first approach be on a "class" basis to the Inspector of Court Services. The matter was passed on to a LAM clinic specializing in criminal law and which provides prison duty counsel services.

(b) A member of the public with particular knowledge of a problem area requested a "Know Your Rights" pamphlet be prepared to be available to prostitutes who appeared to the inquirer to be subject to various kinds of harassment and danger. Again this was passed on to a staff lawyer in a clinic specializing in criminal matters.

(c) A private practice lawyer referred a small business client with a complaint involving the deposit policy of a utility company. The lawyer had, without success, complained to the Public Utilities Board. The PID Director expressed doubt about the merits of the complaint. The individual decided to take his complaint personally to the responsible provincial minister.

(d) A representative from a group of tenants in a single apartment block inquired about representation on a rent review appeal. Rents in the building ranged from about $500 to $1,000 per month. The Executive Director was consulted and he indicated that he would not likely approve an application as the group was not a low income group and could afford to retain its own counsel.

(e) A matter very much like the one mentioned just above was an inquiry from a group of cottage owners wishing to appeal a tax assessment.

(f) Another group of cottage owners inquired about a problem concerning access to certain portions of a public beach. The group was referred to the Lawyer Referral Service of the Law Society of Manitoba.

(g) The Brandon Legal Aid office referred to the PID a general problem concerning police-citizen relations in that city. Because the Director is Vice-Chairman of the Manitoba Police Commission he could not become involved in the matter. He outlined complaint procedures and suggested that the Brandon office take on the matter.

(h) A Winnipeg resident was referred to the PID by a Provincial Judge who was aware of the Department's work. Complaints centred on the availability of public transit for school children. At the time the matter was being considered by City Council. The Director suggested that the group with which the inquirer was associated continue its efforts in the political arena and, if dissatisfied with the result, return to Legal Aid. (No basis for legal action appeared to exist at that time.) Press reports indicate that the group was successful at City Hall.

In addition to the matters reviewed in this section, and in other portions of this report, there are some applications by individuals which raise public interest issues. Such cases are sometimes potential test litigation cases. They may have been dealt with administratively as ordinary legal aid applications. Where the PID has been aware of such cases the Department has attempted to keep track of them as public interest matters, but record keeping is not designed explicity to retain information on such cases.

2. Comments

Information on "refusal" cases (formal or informal) cannot be as complete as that for cases taken on by the PID. Ethical considerations prevent the disclosure of the identity of groups or individuals to the evalutor. One of the concerns sometimes raised by members of the private bar observing the PID is that criteria for acceptance are ambiguous and decisions are therefore "political" in nature. (See material in Part IV.) As one practitioner put it, "What can they do except take on issues they agree with and reject those that they don't."

The evaluator could find no factual basis for this criticism. It may be that there are groups who, anticipating that the PID would not be sympathetic to their cause, decline to apply for assistance even where they might be eligible. There is no way of knowing this without research which is beyond our scope.

The only patterns discernible in analyzing "rejections" are those that might be expected given statutory restrictions as to need and nature. Localized issues, issues without legal merit, issues better dealt with through other resources, and applications from groups not in financial need are refused or at least discouraged. "Political" criteria are at least not apparent among these cases.

So far as we are aware, no application refused has been appealed to the Board of Directors or subjected to judicial review by application for prerogative orders.

In summary, no "hidden agenda" is apparent in the pattern of case rejections. Without further research, which, if done at all, should likely be done over a longer period of operation than the evaluation period considered here, no conclusions can be drawn on possible unintended biases in the case selection procedure. On the basis of information available to the evaluator the case selection process would appear to be as fair and unbiased as the law upon which it is based.

OBJECTIVES OF THE P.I.D.

The PID was a development of practice rather than policy. That is, LAM and in particular the present Director of the PID, began representing groups of low income people pursuing what could be termed issues of public interest by one definition or another. The Director did this as a staff lawyer in a LAM clinic in addition to his work on individual cases. Group representation was subsumed under the broad mandate of LAM to serve the poor. The PID was perceived as a practical means of improving such representation by broadening LAM's capacity and effectiveness in representing low income groups.

Neither policy considerations nor theoretical justifications were paramount concerns. At least they are not articulated in extant written material. Apparently little effort went into defining such concepts as "public interest", "public interest law" or "groups". Statements of objectives, goals, purposes, or mandates produced in the early phases of development of the PID are therefore general and of limited use in providing a framework for evaluation.

As stated in an application for funding from LAM to the Department of Justice, the purpose of the PID is to "represent groups" and to "litigate test cases", such cases to deal with "issues of public interest". The service is to be offered to low income people in Manitoba and priorities have been established and applied ranging around this target: first priority to issues affecting the target

population alone, second priority to issues affecting that population primarily or disproportionately, and third priority to issues affecting all citizens including those who are poor. The priorities are dictated by the fact that the PID is part of a larger legislated effort to aid the poor and to correct socio-legal imbalances.

The application for Justice funding expressed a hope, which may be taken as a goal, that "broad institutional, economic and public policy reforms" would be facilitated by the activities of the PID. The project was therefore infused with high ambition. Incremental change over an extended period of time in concert with other changes that chance and effort may bring, while possibly a measure of "success", was not indicated as such. The PID in its funding application proposed to approach goals and objectives paraphrased as follows:

1. To give to Manitobans, and particularly low income groups among them, greater access to decision-making bodies and influence in the decision-making process that affects their lives.

2. To protect and preserve such specific interests as the environment, Native and minority rights, and consumer interests.

3. To promote law reform through test case litigation, research and lobbying.

4. To train citizen groups to be effective advocates in their own behalf.

The goals and objectives dictate the activities of the PID. In the funding application the services offered were listed in a manner similar to this:

1. Deliver "legal services" as appropriate for groups and the citizenry to approach issues of "public interest".

2. Report to LAM staff and the Bar on "public interest issues".

3. Encourage research, both within and without LAM, on "public interest law issues".

4. Facilitate interchange between "public interest organizations" and the Bar on "community issues".

5. Pursue litigation of "public interest law cases" where appropriate and in so doing cooperate with LAM staff in the clinics and members of the private bar.

Thus the mandate by which the PID agreed to fuel its operation was stated in the most general of terms, sparked by the highest ideals, and driven by limitless ambition. Has it succeeded? To answer that question one must retroactively devise and apply specific measures of "success", despite the pitfalls of such an exercise. Any criteria one might appropriate to "measure" or "evaluate" must be somewhat arbitrary. Failure to approach a goal never firmly in mind is surely no fault. Yet some objectivity and specificity is fundamental to evaluation. Therefore the statement of evaluation criteria which follows of necessity supplements and modifies the "goals and objectives" adopted by the PID for its own guidance.

CRITERIA FOR EVALUATION

In examining the overall operation of the PID and its handling of each of its major files it is necessary to devise some specific "measures". While quantification is neither desireable nor feasible in the circumstances it is necessary to have some qualitative focii.

As stated above, the goals the PID has adopted for its own guidance have limited usefulness in an evaluation that strives for some degree of specificity and objectivity. Nevertheless, "internal objectives", as they shall be called here, offer one dimension for evaluation. We shall ask to what extent has the PID met its own internal objectives?

In addition one is entitled to go beyond broadly stated goals to ask such questions as: What is meant by "public interest issues" and does the PID truly address such issues and only such issues?, What are "groups" and how does the PID effectively meet the legal needs of groups?, What should be the result of PID intervention and have expected results been realized for the group or for the "public"?, Has PID intervention had "dysfunctional" results for some groups or for the "public interest"?

Before such "external criteria" can be formulated some basic concepts must be explored. Specifically the concepts of "public interest" and "group" need to be defined. First we turn to "internal objectives".

1. Internal Objectives

In examining the operation of the PID in general and in particular cases as well we shall ask:

A. Has the target population (low income groups) been given greater access to legal process as a result of the establishment of the PID?

B. Has the PID accepted cases in accordance with stated priorities?

C. Has the PID engaged in a range of activities consistent with its stated objectives and if not, why not?

D. Has attention been given to training groups in advocacy skills, law reform, and all other services purported to be offered by the PID?

2. External Criteria

a) Public Interest - "An Unruly Horse"

In examining the work of the PID one obviously must ask in examining each case whether the matter legitimately falls within the limits of "public interest law". It is necessary therefore to attempt to formulate an "operational definition" of the concept to use as a benchmark. This, as will be seen, is no easy task.

There are similarities among the concepts of the "public good", "public welfare", "public policy" and "public interest". Each of them suggests a moral foundation beyond mere private concerns or interests. None is denotative. To each may be applied the classic judicial comment made in the last century by an English judge who protested against lawyers arguing too strongly upon grounds of "public policy". Said Burroughs J., "[I]t is a very unruly horse, and when you get astride it you never know where

it will carry you" (Richardson v. Mellish (1824), 2 Bing. 229 at 252). Lord Denning, a reknowned modern jurist, never one to doubt his own ability to do the right and proper thing in spite of formidable legal impediments, continued the equestrian metaphor: "With a good man in the saddle, the unruly horse can be kept in control. It can jump over obstacles" (Enderby Town F.C. Ltd. v. Football Assoc'n Ltd., [1971] Ch. 591 at 606).

The concept of the public interest has existed in one form or another in the common law as a tool for innovative judges and as a last-ditch argument for lawyers. Julius Cohen, professor of law at Rutgers University, observed that lawyers have a vested interest in the vague and ambiguous concept of the public interest as an "operational concept: They would be tongue-tied without it. Accordingly, as long as there are lawmen, the concept will flourish" (Cohen, 1967, 160).

The legal meaning of the "public interest" was considered by the Manitoba Court of Appeal in Re City of Portage la Prairie and Inter-City Gas Utilities Ltd. (1970), 12 D.L.R. (3d) 388 (per Freedman J.A.). At least in the context of legislation considered in that case, it was decided that "in the public interest" has no fixed legal meaning. Its scope is broad or narrow as circumstances require. At one time it may refer to the interests of but one public section while at another it may refer to the public as a whole.

Judges sometimes infuse the term "public interest" with specific

legislative meaning by deducing parliamentary intention, which is presumed always to be directed toward the public interest. (See for example Baia v. Baia (1970), 12 D.L.R. (3d) 545 at 550 where Wright J. considers the meaning of "public interest" as it appears in the Divorce Act, 1967-68 Canada.)

As a legal concept, therefore, "the public interest", while it lacks precision can have positive value, as political scientist J. Roland Pennock (1967, 182) observes, as a "spur to conscience and to deliberation." But as such it has little empirical usefulness.

b) A Horse of a Different Colour?

Have philosophers and political scientists been able to break the "unruly horse" known to jurists and lawyers? Can they provide an operational definition of "public interest"?

Some analysts have despaired of finding an operational definition. Professor Schubert (1960, 220) concludes, after a lengthy survey of the public interest literature, as follows:

> ...[The] investigation has failed to reveal a statement of public-interest theory that offers much promise either as a guide to public officials who are supposed to make decisions in the public interest, or to research scholars who might wish to investigate the extent to which governmental decisions are empirically made in the public interest....[N]either my analysis nor that of other contemporary critics suggests that the public-interest theory prevalent in America today either is or is readily capable of being made operational.

In reviewing a number of definitions Weisbrod (1978) observes that the term "public interest" has historically been used to

justify everything from democracy to totalitarianism. While some lawyers conceive of "public interest" as justifying the espousal of unpopular causes and the promotion of change, others use the same concept to avoid change as Cohen (1967, 160) observes:

> Although the interest of the public might be jaded or directionless at the moment, trust the lawmen to argue that it still would be in the public interest to retain what the public already has until it has discovered what it is that might be better.

The reason that the concept of public interest can apply in such disparate situations and with such contrary motives is that it is at base a normative rather than a scientific concept. "Public interest" is a term, states R. E. Flatham (1966, 4), "...ordinarily used to commend or approve; the primary function of the concept in our language is to convey approval or commendation of public policy."

The definition of public interest cannot therefore exist without some substantive content. It must at least be based on a concept of social order and such conceptions may vary widely among those using the term "public interest".

Some assume a commonality of interest, a consensus, a single interest that all citizens are presumed to share. There are others, Weisbrod (1978, 26 - 27) suggests, who go only so far as accepting that there is a consensus among the "preponderance" of people. While some others believe that "the public" is incapable of determining what it is that constitutes the "public interest" (Weisbrod, 1978, 27):

> Supporters of the "idealist" school believe that only government officials have the knowledge and wisdom to determine what the public interest is. This idea, anathema to democratic theorists...is still with us in the twentieth century, embodied in its most extreme form in the modern totalitarian state.

Finally there is a conception of public interest which emphasizes procedure and rests upon a pluralist conception of the social order. This conception is particularly appealing to lawyers who wish at times to place some distance between their own actions and the substantive merits of their clients' causes:

> A procedural public interest would consist of an assurance, in the decision process, that the widest possible range of interests will be consulted. This consultation will assure that the intensities of preference are revealed.... A procedural public interest would both establish the values that underlie the public interest and reveal the consequences of alternative policies. The rules of the game are important, not just the specific, isolated outcomes. (See also J. Burkead and J. Miner, Public Expenditure, Chicago: Aldine, Atherton, 1971 at 157-158).

In this conception of the public interest the traditional lawyer can conceive of himself/herself as acting "in the public interest" in his/her daily job of representing one side - either side - of a controversy. The pluralistic political system, if operating properly, is presumed to be a fair one. When it operates fairly and properly any outcome is held to be in the public interest. Lawyers, in the "public interest", correct the biases of under-representation and, in this traditional conception, "make pluralism operate". As Weisbrod (1978, 28) observes:

> Most lawyers who have discussed the public interest and public interest law do not seem to have any quarrel with this view, the problem, as they see it, is either that too many "interests" are not represented at all...or that they are inadequately represented.

Commentators in the Yale Law Journal (1974), however, claim that

many public interest lawyers do not share the pluralist view and are as much or more committed to advancing the particular interest they represent as they are to notions of procedural fairness. The pluralistic view of society is rejected in favour of a "conflict" view - a model of society composed of irresolvable (in the present framework) differences and interests - a society in which the major institutions "compete" only in an illusory sense and in which institutions in fact work in concert to defend and extend the stranglehold of the existing social and political order over the individual. (See generally H. Marcuse, One Dimensional Man (1964).)

> The irrationality of the whole - of growing productivity based upon growing destruction, of technological advances used to produce weapons of death or plastic products for a consumer society, of increasing affluence producing pervasive effluence - goes unnoticed and unprotested. (Yale Law Journal, 1974, 7.)

In the "conflict" conception of social order in liberal democracies the "public interest" can only be pursued by tackling critical issues identified by careful analysis leading to value choices. Say the commentators in the Yale Law Journal (1974, 7), while such choices may seem arbitrary to the traditional lawyer committed to the pluralist view, "The value choices underlying this [conflict] claim may be no more subjective than the value preference which supports a faith in the outcome of the pluralist system as it presently operates."

In a similar manner Flatham (1966, 6) claims that, "...we can properly apply 'public interest' to a measure only when we have

considered the full impact of the measure and have marshalled normative considerations relevant to justifying the impact." One cannot, he suggests, escape the process of moral choice in deciding to pursue the "public interest". He says (at 9):

> [T]here can be no rationally defensible answer to the question "What (policy, decision, action) is in the public interest?" Since the concept is used to commend, it can only be used to express personal (or group) preferences.

So the unruly horse of public policy remains unbroken, ridden as it were by lawyers who are alternatively (or at once) committed to particular causes and to fair competition according to the ideal "rules of the game". If one cannot define the public interest in any objective sense, one can at least describe what is called "public interest law" by describing the activities of its practitioners (Yale Law Journal, 1974, 29):

> [T]he emphasis of most public interest lawyers is on having a wide impact on the poor, usually through representing groups rather than individuals and through attempting to achieve changes in legal rules and in the behaviour of governmental agencies....[T]he search for greater impact depends in large part upon the lawyer's assessment of how social change is best achieved...and what sort of change is important.

c) Operational Definition

Having surveyed the various attempts to define the public interest by courts and by scholars, we are left without much precision. Perhaps the best operational definition that one could adopt is that formulated by Marks, et al in The Lawyer, The Public, and Professional Responsibility (1972, 51):

> Our definition of "public interest response"...is that which includes both efforts to democratize participation in the legal processes and policy efforts addressed to the overall good of the community.

This definition includes the traditional "procedural public interest" elaborated above and efforts to achieve specific goals identified by substantive moral choice. As we examine the activities of the PID we can at most ask if they fall within this broad operational definition, recognizing at the outset that there is precious little that could not be made to fit.

d) Groups and Legal Competence

The PID was established to work with groups, albeit when test cases are litigated they are, for formal legal purposes, individual matters. In examining the cases represented by the PID, we propose to examine the nature of the collectivity served as well as the impact of the service upon the group. It will first be necessary to set forth some basic sociological concepts and to provide a framework for analysis.

Having determined that "...there is no substantial body of information available on the current state of knowledge and utilization of the law by Canadians, Brickey and Bracken (1982) set forth a conceptual framework within which to promote and conduct research. While their purpose was to provide a basis on which to assess public legal education needs, the framework assists as well in analyzing the delivery of legal services since, as these authors correctly point out (at 2) "Knowledge must be accompanied by access to legal institutions which would allow such knowledge to be used for the benefit of the user."

Brickey and Bracken (at 55ff) borrow from Carlin et al (1967, 63) the concept of "legal competence" consisting of "one part awareness and one part assertiveness". In Carlin's terms,

> The legally competent person has a sense of himself as a possessor of rights, and he sees the legal system as a source for the validation of these rights....[T]he legally competent person takes action: he turns to the legal system and uses it when his interests can be served by doing so.

Brickey and Bracken (at 5) warn, however, "Competence might...involve a decision not to invoke the law, in any formal sense, as the best way of meeting a need or resolving an issue", so long as the decision to do so is a conscious and informed one.

In the adaption given by Brickey and Bracken, "legal competence" is seen as being composed of three rather than just two overlapping and interdependent parts: "awareness", "skill" and "legal resources" (at 6):

> Awareness involves knowledge of law and cognizance of legal context within which certain problems, issues, etc. may be placed for action, relief, resolution, etc.... Skill emerges in similar circumstances as awareness, although it is more related to activity around achieving one's objectives. Experience with the system is an important component of skill....Legal resources involve having access to the wherewithall to bring about whatever action is determined as necessary....[A]ttainment of legal competence assumes a continuous interaction among the three [factors].

"Legal competence" can be located within collectivities as well as among individuals. Brickey and Bracken (at 7) suggest that collectivities can be usefully classified as "groups", "aggregates" or "public/citizen".

Collectivities who self-consciously share a "common social identity" such as an ethnic community are classified by them as "groups".

The group may be composed of voluntary members (e.g. occupation) or involuntary members (e.g. cultural minority).

Groups are distinguished from "aggregates", collectivities sharing a common problem which may be a legal problem. An example of an aggregate is children. Aggregates or parts of aggregates may be organized in some instances to confront their common problems. In this sense they may resemble groups.

The final category in this classification scheme includes all members of a state - "the public" - or what Brickey and Bracken call the "public/citizen" category. "The public are held accountable to the state for failure to live up to obligations (like taxes) but the question remains as to how the public holds the state accountable for protection of rights and discharge of its duties" (at 7).

In examining the needs of "groups" Brickey and Bracken argue (at 16) that groups may have specific legal needs that stem from their common identity and that cannot be comprehended in terms of individual legal needs. An example is the legal position of Indians in Canada, a group explicitly recognized in law and one which the law treats in some respects as being qualitatively different. As well, a group may encounter problems that have a coincidental impact on most or all of the group's members. The group then becomes the logical unit to pursue the resolution of such technically individual legal problems. An example of an "individual" problem best solved

by group action is systematic discrimination against group members. While the problem may be amenable to individual solution, it can more effectively and efficiently be dealt with by the group, provided the group has developed sufficient legal competence. Groups must have both awareness and skill, but a crucial problem, Brickey and Bracken (at 22) state, is access to legal resources.

> Access to legal representation is a resource that is also essential at the group level to establish legal competency. Because many groups will have the financial capability to pay for legal services, the effect of economic constraints should be less of a problem at the group level than at the individual level....[H]owever, there will be groups who will require financial assistance in obtaining a lawyer. These will be groups who do not have an economic base of support, either because of their relatively small size or because the group is composed of individuals who lack the economic resources to give financial contributions to the group.

The disadvantaged groups identified in the preceding quotation are, of course, part of the "target population" of the PID.

"Aggregate" legal needs "concern a single issue or set of problems common to a collection of individuals, which may be dealt with through the legal system" (Brickey and Bracken, at 25). And, "aggregate legal competency is related to an understanding of the law as an arbiter and specific problem solver, and law as an instrument of social change in a democratic society" (at 25). Aggregates may have difficulty in perceiving their apparent individual problems as part of a common pattern and in appreciating the advantage of treating the problem as one best confronted by collective action. The problems of consumers, the handicapped, or of immigrants serve as examples.

Of particular difficulty to public interest lawyers working with aggregates low in the awareness component of legal competence are the ethical rules prohibiting the promotion of litigation. (As will be seen, the point at which the PID may no longer ethically offer assistance and the extent of "non-legal" aid that should be given are problems the Department has often had to face.) In the case of aggregates, awareness must lead to organization in order for collective action to proceed. Once an aggregate has an organizational structure all of the problems of obtaining legal skills and access to resources confront the aggregate just as they do groups.

In a study commissioned by the Department of Justice (following in some degree the guidelines set down by Brickey and Bracken) entitled The Needs of Community Groups for Public Legal Information (1983, 2), Christine Wihak rejected the classification of collectivities offered by Brickey and Bracken in favour of a single category based on the organizational component present in either "groups" or "aggregates": "[G]roups of people associating together within the framework of a formal structure to share and promote a common interest," are referred to as "group level consumers" by Wihak.

Some confusion is created by the ambiguity of common discourse. The PID has a mandate to represent "groups" (presumably including "aggregates"). "Public interest" law practice has generally included work with "groups" and "aggregates". The problem is more one of

semantics than substance. As Brickey and Bracken point out (at 29) "When one defines a 'public' as a particular group [or aggregate] with a common legal problem, as opposed to an issue common to all members of society, [as those authors have done] then it is appropriate to consider such a public as an aggregate".

The widest category in the classification presented by Brickey and Bracken is that of "public/citizen". In democratic societies a legally competent citizenry is considered essential to a properly functioning political system. Moreover, the state to some degree is considered to be the guardian of the rights of its citizens. "When an individual encounters a problem that affects all members of a society or has implications for all members, then the problem becomes defined as a public legal problem" (Brickey and Bracken, at 33). Such problems as the cost of utilities or automobile safety may be perceived as individual problems, but they are arguably better conceived as public issues. Such issues may properly be seen to fall within the bailiwick of public interest law alongside the representation of groups and aggregates.

Once again, in order to be "legally competent" the public generally must have an awareness of the civil rights, legislative and judicial systems, and public service agencies available to citizens as well as the collective nature of the problems they confront. Upon the foundation of awareness, "skill" is built: "...knowing legal rights, what machinery (if any) exists to deal with what kinds of problems; and <u>knowing what do</u> do if a problem arises" (Brickey and Bracken, at 34).

Finally, an aware and skilled citizenry must have access to legal resources. Publicly spirited citizen groups need to be able to put their case to regulatory bodies and to legislators. The PID was established on the premise that public access to the decision-making process can be enhanced through publicly-funded legal assistance.

The concepts of "group", "aggregate" and "public/citizen" give an analytical framework for examining the nature of the collectivities represented by the PID in the period of evaluation. We can describe each collectivity and proceed to assess its "legal competence" along the dimensions of "awareness", "skill" and "legal resources". We can also look at change along these same lines: Has contact with the PID resulted in an increase in the "legal competence" of the collectivity? The development of legal competence should perhaps be seen as the ultimate goal of the operation of the PID. While legal solutions for specific problems may present immediate operational goals, the promotion of legal competence will have lasting effect. As Wihak (1983, 5) observes, "Given the pervasiveness of law in Canadian society...groups with some level of legal competence have an advantage in problem-solving."

e) Focus Questions - External Criteria

Applying the conceptual framework set forth above, we shall approach each PID case by asking these questions:

A. What are the organizational characteristics of the collectivities served?

B. What were the levels of legal competence of the collectivities and has PID involvement increased these levels?

C. Were the activities of the PID appropriate to the legal competence of the collectivities served?

D. Was the public interest served and, if so, in what manner was the public interest served in each case?

f) Additional Considerations

In addition to the focus questions centering on both internal and external criteria we shall consider the operation of the PID in light of criticisms that have been levelled against public interest law practise generally. (For a review of these criticisms particularly as they apply to environmental law, see R. Arand and I.G. Scott, Q.C., "Financing Public Participation in Environmental Decision-Making", 60 Can. Bar Rvw. 81.)

A. Has the operation of the PID "placed additional burdens on already strained judicial and administrative resources?"

B. Has the PID "encouraged unmeritorious litigation?"

In a final section to this evaluation we shall consider the implications and advisability of maintaining a public interest law department in a government-funded, legal aid program.

PART II

MAJOR CASES

INTRODUCTION

In this Part of the evaluation report the major cases handled by the Public Interest Department (and for which client releases could be obtained) are discussed in some detail. All of the cases discussed in this Part were either begun or continued during the evaluation period. While we have centred upon activities undertaken within the evaluation period it has sometimes been necessary to include a detailed history.

For each of the cases a "Description" introduces the matter. Discussed in the Description are such things as the method of referral, the chronological development of the case, the services delivered by staff of the PID, and the case outcome.

Following the Description is a commentary applying the "Focus Questions" derived from the Evaluation Criteria set forth in the Part preceding this one.

The Part ends with a summary and overview of the nine major cases discussed.

BRANDON TRANSIT

A. Description

In the Spring of 1982 the City Council of Brandon (the "City") decided to react to a budgetary deficit by accepting a recommendation from the City's Engineering Department that transit services be reduced. Bus service in the City of Brandon has been a matter of public interest and debate since that time. There have been service reviews,changes and cutbacks carried out by the City and a variety of public reactions have resulted.

When the issue first arose a group of dissatisfied and concerned consumers approached the Westman Legal Aid Office in Brandon to seek assistance. As well as the cutback in transit service the consumers group was upset with the manner in which local authorities behaved. Debate on the issue by Council took place largely in the Committee of the Whole, meeting in camera.

Legal Aid was granted and the PID has represented the consumers group (or an individual acting on behalf of the group) in three separate, but related litigation matters. Assistance has been given as well in group organization, presentations at public hearings, and the pursuit of "non-legal" routes to settlement as will be described below.

Represented by the PID, a member of the consumers group commenced two separate court actions in her personal capacity against the City in an effort to challenge the transit cutback implemented in July of 1982.

The first court action was begun by Originating Notice of Motion in the Court of Queen's Bench, filed pursuant to provisions of The Municipal Act (Manitoba) on September 8, 1982. The Motion alleged nine grounds on which the decision of the City taken on June 21, 1982 should be quashed.

The second court action was filed by the PID on behalf of the same plaintiff as a class action. A Statement of Claim for declaratory relief was filed on the same date as the action noted previously. The plaintiff sought a declaration concerning the positive duty of the City to provide a minimal level of essential public services basing the claim on the Charter of Rights and Freedoms (Constitution Act, 1982). Ultimately this second action was discontinued.

The motion to quash was heard by Mr. Justice Hamilton. His Lordship handed down Judgment on December 23, 1982 granting the application on the basis that the City had violated provisions of The Municipal Act in reaching its decision. Council's decision was held to be void and of no effect because it had been approved at a closed meeting, then ratified immediately thereafter at an open meeting without first issuing a public report on the closed-door discussion.

Judicial review only applies to the manner in which administrative decisions are made and not to the merits of the decision itself. (See authorities cited by Mullan, 1979, Chapter IV, "Judicial Review of the Scope and Correctness of Decisions" and Chapter III, "Judicial Review of the Manner in Which Decisions are Taken".)

As a consequence the City was able to "cure" its original error by passing a motion effecting like cutbacks even before Mr.Justice Hamilton had made his ruling. Nonetheless, for reasons of its own, the City appealed the decision of the trial judge.

The appeal was argued on November 1, 1983 and both the PID Director and the staff lawyer, Lea Baturin, prepared for and appeared on the matter. The Manitoba Court of Appeal dismissed the appeal and reaffirmed Mr. Justice Hamilton's decision.

The third litigation matter related to the Brandon transit issue involves the Public Utilities Board ("PUB"). Application to the PUB was effected by the PID on behalf of a new legal entity, the Brandon Transit Consumers Association, Inc. (the "Association").

Assisted by the PID, the consumers group incorporated as a non-share corporation under The Corporations Act (Manitoba) on January 13, 1983. In March of 1983 the LAM Board, already familiar with the past history of the group by virtue of the two court actions described above, considered the Association's request for Legal Aid. The Association asked to be assisted by the PID in representations before the PUB. A certificate issued. On May 20, 1983 formal application was made to the PUB to restore the transit service to the level that existed before the 1982 cut-backs and to review the fare schedule, operating costs and financing of Brandon's transit system. While the PUB agreed that it had the jurisdiction to entertain such an application, it declined to do so at that time. Refusal was on the basis

that the subject matter was already before the courts by virtue of the two court actions previously described one of which, at the time of Application to the PUB, was under appeal by the City.

In conjunction with all of these litigation matters both the Director and the staff lawyer were kept busy with preparation of documents, legal research, and court appearances in addition to regular meetings with the client group. By the Fall of 1983 the Director was in almost daily contact with members of the Association. The Department had continuing consultations with a transit specialist. "Behind the scenes", so to speak, were attempts to settle. The Director put together a detailed plan of settlement subsequently rejected by the City in January of 1983.

In a report to the Department of Justice dated November 16, 1983 the staff lawyer detailed the considerable work she was doing on these matters. In particular she prepared appeal documents and argued in the Manitoba Court of Appeal. She succeeded in getting the appeal dismissed, with costs awarded to the respondent Association.

In the meantime the staff paralegal was involved in assisting the Association to explore and to effect political solutions.

Elections for Mayor and Council were held in Brandon on October 26, 1983. The transit issue loomed very large. During October prior to the election the paralegal met twice with the Association.

They decided on a strategy: first to approach the "old" Council with a proposal to restore transit service to a level more acceptable to the Association. In conjunction with this, and taking advantage of the election campaign, they decided to conduct a poll of all candidates on transit issues. A "transit questionnaire" was constructed and sent to candidates. A copy was sent, with covering letter and a press release, to all local media sources. It was discovered that 80% of the candidates favoured the restoration of transit cut-backs. Results were released to the media along with an announcement that the Association would be making proposals to the newly-elected council should the old council fail to take effective and acceptable action on the matter.

In anticipation of a proposal to a new council the paralegal was asked by members to assist the Association in organizing and drafting a public petition calling for restoration and review of the transit system.

Immediately after the new council was sworn in a Transit Review Committee was established and public hearings were conducted. Assisted by the PID, the Association's president gave a presentation at these hearings on November 14, 1983.

In the result the Transit Review Committee recommended, and the Council agreed, to apply to the PUB for a two-staged fare increase (objected to by the Association), to institute interim transit improvements, and to commission a comprehensive report from a recognized transportation consultant.

At this point the PID's involvement was reduced merely to monitoring political developments.

Then, on May 22, 1984, the City applied to the PUB for approval of proposed fare increases. A hearing date was set for July 3, 1984. The Association applied for and was granted legal aid to oppose the City's application. The PID once more became involved. On June 14, 1984 the Director, as counsel for the Association, filed a Letter of Intervention which also requested a hearing of the Association's outstanding Application for an investigation and review of public transit service (the May 20, 1983 application).

In the Letter it was also announced that the earlier Statement of Claim for declaratory relief was being discontinued, thereby removing the previous objection of the PUB to hearing matters already at issue before the courts.

At the hearing the PID argued for the intervenor Association that only the first stage of the proposed fare increase should be considered. It was further argued that it be allowed only upon consideration as well of the quality of service being afforded consumers. The PUB should, they argued, wait for the consultant's report. PUB counsel replied that the Board would not acceed to the Association's request to limit its consideration nor would it consider the Association's 1983 Application at the July, 1982 hearing.

At the hearing the Director maintained his objections to proceeding

while transit service was under consultant's review and under challenge of the 1983 Application by the Association. In the result, the PUB granted approval of the City's proposed two-staged fare increases. And it declined to hold a hearing into the Association's 1983 Application before the City's consultant had issued a report and the Council had time to implement changes in consideration of the report.

Once again the Association applied to LAM for assistance - this time to appeal the PUB decision to the Manitoba Court of Appeal. A certificate was granted and Notice of Motion for leave to appeal was filed on July 30, 1984. Six grounds of appeal were set forth. The Director, in his opinion supporting this latest application, said as follows:

> Aside from the legal points which are available to be argued in this case, I believe that two important general issues are raised which are of concern to consumers. First, can a regulatory board approve a schedule of rates in the absence of complete information on service? Secondly, is the Public Utilities Board justified in ignoring a serious complaint about quality of service?...Both of these issues have implications for future proceedings in this and other regulated industries.

The Association's motion for leave to appeal was argued in September, 1984 successfully. The full result of the Brandon Transit issue has still to be determined.

B. Focus Questions

1. Access

This case came to the attention of the Brandon Legal Aid office when a member of the consumers group, who had been a legal aid

client, approached the office. The Brandon office did not have the resources necessary to assume conduct of the case. Without the PID it is therefore unlikely that this complex case would have been pursued involving as it did two civil actions, an application to and an intervention before the PUB, and two appeals heard in the Manitoba Court of Appeal.

As a result of events connected with the Association's cause there is now greater openness in the conduct of municipal decision-making in Brandon. A successful challenge to a "secret" process has brought about greater citizen access generally. The PID was also able to assist the client group in getting directly involved in municipal politics, making their cause an election issue and forcing candidates to address the transit issue. In that way access to the democratic political process was enhanced.

2. Priorities

This case falls into the middle category of the three-part priority ranking. The issue is one which affects all citizens potentially, but low income people disproportionately. In the course of conducting this case the PID also established liaison with other Brandon organizations and government agencies concerned with issues affecting the target population. These include the local university students' association and the community college council who were, to some extent at least, allies in the cause.

3. Activities/Skills Training

The activities in which the PID engaged are described above and

by the Director in a January, 1984 report to the Department of Justice:

> This matter began primarily as a litigation matter, but following the quashing of a Council decision, and the incorporation of a consumer action group, a variety of other activities were engaged in, including drafting briefs, and negotiation with Council, lobbying, and group skills development.

4. Nature of Collectivity

The Association was described as follows by the Director in a memorandum dated March 21, 1983 supporting its legal aid application:

> ...[T]he group presently consists only of the incorporating directors and about a dozen other people who have been the organizing core of the citizen's action group on this issue. There are several welfare recipients in the group, including the original Legal Aid client....There are also several laid-off transit drivers, and a couple of employed transit drivers. Several members of the group are retired, one or two are students, and one is a university professor.... With respect to finances, the group has no funds. A small amount of money could probably be raised by a fundraising drive in Brandon, but this would take a considerable period of time, and it is extremely unlikely that the group could raise a sufficient amount of money to finance the cost of legal fees and consultants expenses in a hearing before the Public Utilities Board.

This description of the group did not change significantly by the time the most recent application for assistance was considered.

In our terminology the Association is best described as an aggregate and one with a limited focus - mobility problems and the costs thereof.

The Association, while it apparently has enjoyed a broad base of support, has never solidified its organization. When the Transit Review Committee held hearings, forces opposing the Association were

able to suggest that the Association represented the interests of no more than a few disgruntled citizens.

The aggregate therefore has remainded an aggregate with minimal formal organizational structure. It is difficult to see in it the potential for a more broadly focused or broadly based consumer "movement" in Brandon. On the other hand, the successes of the Association - the full extent of which remain to be seen - may serve as incentives to other members of the Brandon community to become involved in "public interest issues".

5. Legal Competence

Whatever can be said of the legal competence of the Association must be assessed together with its limited organizational base. It obviously includes members with sufficient awareness to have approached the Brandon Legal Aid office and to have seen the necessity for collective action. Group members have been involved in a number of social and political causes. In the course of conduct of the case, members, guided by the PID, developed added skills in mounting political pressure and in presenting their cause to decision making bodies. Whether this repository of legal competence will continue to have effect once the transit issue is settled remains to be seen.

One member of the Association said, "It was obvious to us that...[the PID staff] regarded this as more than a discrete event. It was an educational process." Issues were always discussed thoroughly with the group. While the member interviewed expressed the view

that the group would not continue to exist, he observed that members were involved in other causes and "they are going to be better informed and better directed as a result of their experience."

6. Appropriateness of Activities

The PID appears to have engaged in activities appropriate to the nature of the issues and the nature of the client association. Assistance was given on both "fronts" - legal and political/administrative.

A member of the client association reported that the PID staff sought instruction on all but the most trivial matters and followed the Association's wishes even when contrary to the Director's advice. "We always got copies of correspondence and we were made to feel that our work was important to success. Our ideas were encouraged."

The issue appears: to what extent can a law office properly counsel political action while litigation is pending? (See also "Amaranth School Committee" infra.) This issue is addressed more fully in an ensuing section of this report.

7. Public Interest

The Act (see supra, Part I, "Eligibility and Selection") gives minimal specificity to the concept of "public interest" by including in that term "any consumer...issue." The transit issue is without doubt, a "consumer issue".

Even without the provisions of the Act it is unlikely that anyone would object to the designation as "public" the issue of the level of municipal services. Potentially all citizens are affected.

In addition to the narrow issue of public transit services in one Manitoba community, the case has raised some more general issues. These include the principle of openness in civic government and the proper conduct of regulatory proceedings.

In terms of concrete results, certain of the worst features of the transit cut-backs have been ameliorated. A comprehensive analysis has been commissioned. A final analysis of the degree of restoration of transit service cannot yet be made.

In the words of one member of the Association:

> We demonstrated that you can 'fight City Hall' or any other institution that tramples on people's rights and you can get help to do it. Maybe now people will be a little less complacent. People in the community - not just our group - have become a little more 'politicized'. Not much maybe, but a little bit.

In several respects, therefore, this case has concerned the public interest.

STONY MOUNTAIN "DOUBLE-BUNKING"

A. Description

In an action against the Solicitor General of Canada, the Commissioner of Corrections, and the Warden of Stony Mountain Institution, the federal medium-security facility for the region, a group of Stony Mountain inmates challenged the practice of "double-bunking" prisoners in cells designed for single occupancy.

The individual plaintiffs were all members of the Stony Mountain Inmate Welfare Committee, an unincorporated body recognized by Correctional Service Canada policy as representing prisoner interests.

This matter first came to the attention of two members of the Winnipeg private bar. It was they who encouraged application for group legal aid. Application was made by the Inmate Welfare Committee in September of 1982. The supporting written opinion prepared by the PID Director concluded that the Committee had a good, arguable case under provisions of the Charter of Rights and Freedoms (Constitution Act, 1982) as well as other grounds. The PID Director also considered the "priority ranking" of the matter when he wrote in his opinion, "Clearly, the group affected is part of the low income client constituency, and a successful result would provide direct benefits to such a constituency."

A certificate issued. The PID, as well as private counsel in Winnipeg, were appointed.

Counsel first filed an Originating Notice of Motion (November 12, 1982)

to launch a class action in the Federal Court of Canada, Trial Division. The Class action was withdrawn by agreement and the Motion was replaced by a Statement of Claim by individual plaintiffs (October 5, 1983) seeking declaratory relief and a permanent injunction prohibiting double-bunking.

A Statement of Defence was filed on October 14, 1983 and trial began in Winnipeg before Mr. Justice Israel Nitikman on October 17, 1983. After the plaintiffs' evidence was heard the trial adjourned until November 21, 1983 to conclude a cross examination and to hear defence evidence. It was adjourned again until February, 1984 for argument. In March, 1984 counsel for the plaintiffs moved to reopen the trial on the basis that the Defendants had attempted unfairly to influence judgment in the case. This motion was denied. As of this writing, final decision has not yet been rendered by His Lordship.

The issue was one of national importance. On at least one occasion it was raised in the House of Commons (March 4, 1983 by the Hon. Robert Kaplan, Q.C., then Solicitor General of Canada). The matter attracted considerable attention from both the local and national media. As a consequence the PID itself gained a high profile - perhaps more so than from any other case handled during the evaluation period.

Complex issues both of fact and of law made of this case one that required considerable time and effort. A compensating feature of the task of representing the inmates was that the client group was close at hand, easily available, and largely without competing

demands on their time.

The major issues of law in the case are as follows and required extensive research:

(a) What is the proper role of the courts in supervising the administration of prisons in Canada?

(b) Do prisoners have a legal right to safety while in the custody of prison administrators and do prison administrators have a corresponding duty to prisoners?

(c) Do prisoners have legal rights to privacy not inconsistent with the requirements for security in prisons?

(d) Does double-bunking infringe upon the constitutional right of prisoners for "security of the person?"

(e) Does double-bunking constitute "cruel and unusual treatment" proscribed by the Charter of Rights?

(f) Is the practice of double-bunking, if prima facie unconstitutional, excused by the "reasonable limits" clause in Section 1 of the Charter of Rights?

(g) Was the prison administration compelled to observe a common law "duty of fairness" in instituting double-bunking, and, if so, was that duty fulfilled?

Particularly with regard to the constitutional arguments, the PID had a difficult task. The Charter of Rights was even newer then than it is now. Considerable use had to be made of diverse legal authorities. The "Plaintiffs' Memorandum of Law" filed in court, while succinct in style, runs of necessity to forty-nine pages. A great deal of attention had to be paid to a number of U.S. authorities some of which tended to be adverse to the plaintiffs' case.

Matters of fact in the plaintiffs' case rested upon the testimony of inmates and that of experts. In addition counsel called a Living Unit Officer from Stony Mountain Institution.

Locating experts who would examine prison conditions, report, and subsequently testify took considerable staff time. A criminology professor and former prison warden, a physician in the occupational safety and health field, a psychiatrist, a law professor, and a U.S. correctional administrator were retained to give evidence in addition to the testimony of the plaintiffs themselves. The actual effects upon individuals who were "double-celled", and upon the prison population as a whole, had to be established. Since neither the effects nor the "causal links" were easy to demonstrate, evidentiary problems presented difficulties in putting in the plaintiffs' case.

Internal memoranda and the reports sent to the Department of Justice during the evaluation period indicate the progress of work on this case. An internal memorandum dated May 10, 1983 from the Director said, "Cross examinations and preparation of expert evidence are currently underway...." The report of the PID paralegal, Mel Holley, for September and October 1983 notes the beginning of the trial and describes how he located a medical expert from among several potential witnesses and how he prepared the expert who was finally retained. He also describes meetings with guards - a group who were, at least in these matters, not apparently adverse in interest to the plaintiffs. The paralegal, obtained information in these meetings which assisted in determining whether or not a representative of the guards' union ought to be subpoenaed at trial. He also describes efforts to research such diverse matters of fact as prison accreditation standards and safety and health standards. The paralegal also kept close

contact with members of the client group and attended at trial to coordinate witness scheduling and to organize documents and other evidence. During a period of adjournment he prepared materials upon which cross-examination of one of the Defendants' expert witnesses was based. His involvement ended in November, 1983.

The report of the staff lawyer, Lea Baturin, for the same period outlines her involvement in the double-bunking trial in less detail. She appeared on a pre-trial motion and assisted generally in all aspects of the trial.

The Director, of course, had overall control of the case and was involved in all aspects of it. His efforts are evident from a dossier prepared on the case for purposes of this evaluation and are extensive and thorough. In a copy of a letter in the dossier he says, "This is a national test case for the Canadian correctional system with respect to the use of double-bunking". This statement does not overstate the importance of the dispute.

B. Focus Questions

Having briefly described the Stony Mountain case we shall examine it in light of the criteria chosen for evaluation.

1. Access

While presumably each of the plaintiffs in this case would individually have been eligible for legal aid, without the PID it is probable that insufficient staff resources would have meant that representation by LAM lawyers or by the private bar would have been precluded.

The issues of law could have been researched without PID resources, but the complex issues of fact and the reliance on expert testimony required extraordinary input and would not likely have been possible without the specialized services available through the PID. Counsel for the Defendants, Department of Justice lawyers, stated to the evaluator that the issues involved were "good issues" and that "because of the Public Interest Department, Manitoba is the only province in Canada where these important issues could have been litigated."

2. Priorities

The PID Director, quoted above, places the double-bunking case in the highest of the three-level priority rankings: an issue affecting low income people only. Some members of the private bar as well as government lawyers have expressed doubt to the evaluator about the accuracy of this ranking. Both "conservative" and "liberal" lawyers have indicated these doubts. The criticism goes as follows: while the inmate group is "low income" it is not <u>representative</u> of a "low income constituency". The issue involved is idiosyncratic. It affects a very small number of people and it is only coincidental that the people affected are "low income". Some concern has thus been expressed that public resources that are in short supply - the time and expertise of the PID - are being expended on an issue of importance to so few people.

On the other hand, a very persuasive argument has been made that criminal punishment is part of a more general effort to oppress low

income people as a class and to the extent that such people can resist oppression in its worst forms they are better off generally. (See generally Reiman, 1984; Gosselin, 1983.) However valid the "lower class oppression" argument may be, it has not gained widespread acceptance and therefore many observers will continue to question the general effect of defending the interests of prisoners. (See also "Headingley Inmates' Council" and "Prisoners' Rights - Informal Representation", infra.)

3. Activities

The activities of the PID in relation to this case have centred around litigation in the Federal Court. The client group was, upon application, already an organized group with experience in negotiation and the use of other tactics in advancing its interests. Its effectiveness, of course, was and continues to be limited by its context - a medium-security prison.

The case gained local as well as national media attention and the Director consented to be interviewed by reporters on several occasions.

The activities of each staff member are described above. They would appear to be within the traditional range of legal services in every instance.

4. Skills Training

As noted above, the client group already had some sophistication in advancing its interests within the prison setting by use of a variety of tactics. The PID allowed the Committee to operate

outside, in the courts. No amount of training will allow this client group to do this for itself.

5. Nature of Collectivity

Using the nomenclature adopted by Brickey and Bracken (see Part I, supra) the collectivity, the Inmate Welfare Committee, is an organized aggregate. The Committee, and the inmate population it represents, is racially, ethnically and culturally heterogeneous, but its members share the common problems of the incidents of incarceration. The fact that inmates are organized stems from proximity as well as encouragement and sanction from the controlling authorities.

6. Legal Competence

Because of the severe restrictions placed upon them, to some degree all prisoners become aware of their legal rights. To a greater or lesser extent they become skilled at dealing with the legal authority of their keepers, parole authorities, and other officials with whom they must deal on a regular basis. Virtually all have had close contact with lawyers.

Legal resources are available, to those with the sophistication to use them, through contact with lawyers and through use of the law library in the Institution.

7. Appropriateness of Activities

The Committee is pleased with the quality of representation given

to its members by the PID. During the course of preparation and proceedings and during some very tense periods in the Institution the PID staff kept close contact with Committee members. Although the issues were complex the Committee always felt they were kept informed and were in control of the case.

The effect of the litigation was to defuse to some degree a very volatile situation in the prison. PID staff continue to enjoy a considerable amount of inmate trust.

8. Public Interest

Whether this case is generally representative of the interests of low income people or whether it is idiosyncratic is an issue that was noted above. Also noted was the fact that the concept of "public interest" is so broad as to include virtually any legal issue (see Part I, supra).

To the extent that humane prisons are a measure of a "civilized society" and to the extent that it is of general concern that prisons be operated at minimal danger to both staff and inmates, the issue is one of overall public interest.

The argument that the double-bunking issue stems exclusively or even primarily from the public interests of low income Canadians as a class is an argument that is supportable but is less likely to gain wide-spread acceptance. In the eyes of most observers, therefore, this case would not likely be seen as one involving the public interest and would therefore likely be interpreted as being outside the mandate of the PID.

AMARANTH SCHOOL COMMITTEE

A. Description

The issue in this case was the provision of school services by Turtle River School Division No. 32 (the "Division") to the small community of Amaranth. The Amaranth School Committee (the "Committee") was formed to represent parents and guardians of school-aged children being affected by problems encountered in the local school. Specifically, funding, staffing, program and curriculum in the Amaranth School (the "School") were allegedly inferior and drop-out rates were allegedly, as a consequence, greater than might reasonably be expected. In the course of the dispute the Committee, through its counsel, the PID, filed a Statement of Claim in the Court of Queen's Bench, Portage la Prairie, claiming declaratory relief, an injunction prohibiting or at least delaying the planned removal of Grades X through XII from the School, and a mandatory injunction requiring the Division to provide "proper" school services in the community. The Division was represented throughout by a prominent Brandon practitioner. The result was a settlement, as will be described, an independent review, and some permanent changes in the School and the community.

Amaranth is a community nearby the west shore of Lake Manitoba about 95 km northwest of Portage la Prairie and about 175 km from Winnipeg. It is a small community. About 350 names appear on the voters list. To the east about four miles toward the lake is the Sandy Bay Indian Reserve. About 80% of hte residents of Amaranth are Native - Métis mostly and non-status Indians.

Approximately 65% of the children in the School are Native. About 80% of the Native families receive social assistance as there are insufficient jobs available in the area. White residents for the most part fall into the low income category.

In February of 1982, at a public meeting organized by the Division, an "information package" was distributed that contained the spark of the dispute in the case. Projected school drop-out rates for Amaranth were considerably higher than those for other communities in the Division. Some Amaranth residents were also concerned with a proposal to transfer the high school portion of the School elsewhere. Two issues therefore amalgamated public concern in Amaranth: the quality of education in the elementary and junior high components, and the threatened removal of the high school program.

Subsequent to the meeting set by the Division, Amaranth residents organized several public meetings themselves. Attendance was between 100 and 200 at the meetings and out of them grew the Committee - an elected group of about ten people.

The objective of the Committee was to improve educational opportunities in the School. To this end the Committee did a comprehensive survey of residents and it conducted a petition drive. It also sought advice from a number of sources and came to the conclusion that the needs of the community would best be served by withdrawing from the Division and to become part of Frontier School Division, a provincially-operated division comprising all

of the unorganized areas of the province.

The Committee, in the Spring of 1982, petitioned the Minister of Education to effect this change. At this point the Committee was assisted by a Winnipeg private practitioner whose fees were paid for out of the proceeds of bake sales, raffles, bingoes, car washes and donations of residents. After considerable delay the Minister replied citing statutory reasons why the change proposed would not be possible.

In July of 1982 the Committee came to the realization that it would never be able to raise sufficient funds to pay legal fees and disbursements and made its first application for legal aid. LAM was approached through a staff lawyer who was serving as duty counsel in the area. At that time it appeared that the Committee was mainly intent upon pursuing a political solution to its problems and a certificate was not granted.

In August of 1982 the Minister of Education made a proposal to inject funds, to improve staffing at the School, and to provide consulting services. While the Committee would have been satisfied with the proposal, the Division was not. The Division replied with a counter-proposal that the Minister found no difficulty in rejecting in November, 1982.

Also in the Fall of 1982, the Division confirmed its intention to remove the high school from the School thus arousing even greater concern by the Committee.

After some further frustrated efforts on the part of the Committee application was again made for aid to seek a legal solution to problems encountered. Application to LAM was made on May 3, 1983 and a certificate was granted on this occasion. (Reapplication was made at the suggestion of the PID staff lawyer who corresponded with the Committee.)

In his supporting opinion the Director concluded, "A lawsuit against the division...appears to be the only available legal recourse at this time."

The PID was confronted with some complex problems both of law and of fact. The legal duties of a school division under the Charter of Rights and Freedoms and by virtue of provincial laws are not clear. Nor is there a clear standard which should be applied in determining whether a division is meeting its legal responsibilities. As the Director stated in his opinion memorandum, "The legal issue is novel but of considerable importance to our client constituency - does the Public Schools Act provide a guaranteed minimum standard of educational opportunity to disadvantaged students?"

On July 14, 1983 the PID, on behalf of the Committee (incorporated as a non-share corporation on June 27, 1983), filed a Statement of Claim. Simultaneously Notice of Motion was filed seeking interlocutory relief restraining the Division from closing and mandating continuance of the high school.

Memoranda of law are voluminous and had to be prepared in the space of about a month and a half. They deal with the issues of legally guaranteed standards, rights guaranteed by the Charter of Rights, evidential procedures under the Charter (admission of social science data and other "external" evidence), the role of the courts in supervising the operation of schools, and common law requirements for interlocutory injunctions.

Of even greater complexity were the issues of fact. The case took the PID staff into the labyrinth of educational theory and empirical research. The issues of how schools affect opportunity, how race, ethnicity and family background enter in, the effect of curriculum, staffing, and language - all these had to be surveyed first in the technical literature and then with experts in the field. And, all this had to be accomplished in fairly short order.

In addition, affidavit evidence had to be compiled to support the interlocutory motion. And, the evidence of officials, and others familiar with the community and able to testify, had to be sought out and recorded.

Memoranda of fact in the dossier presented to the evaluator contain some of the following:

(a) Area comparisons in terms of drop-out rates, funding, staffing, programs and curriculum.

(b) Reviews of empirical studies of schools and school performance.

(c) Reviews of studies of the impact of "sub-quality" education on pupils.

(d) Survey of studies relating to race, ethnicity and socio-economic conditions upon school performances.

(e) Profile of the community and a list of community resources and social services.

(f) Lists of school drop-outs indicating race of each pupil.

(g) School performance data for Amaranth pupils.

All of these things were needed to prepare for litigation or, alternatively, vigorously to pursue settlement.

In addition to preparing for a possible trial, the PID had to meet regularly with the client group and to continue to explore alternative or supplemental routes to the resolution of conflicts. The staff paralegal explored the possibility of altering school division boundaries by application to a statutory Board of Reference, or to create a separate district for Amaranth. He also reviewed the Division's own "Policy and Procedure Manual" and worked toward developing terms of settlement.

The Committee was not prepared to rely solely on legal routes to settlement and continued to resort to lobbying and political pressure. In his report to the Department of Justice dated Aguust 11, 1983, the staff paralegal said as follows:

> The group has also asked for assistance in applying public-political pressure to have the School Division reverse its decision and to have the Provincial Department of Education take a more active role in resolving the dispute. My role in the case has been to act as a liaison between the group and the Department Lawyers, to assist the group with its organizing, to gather evidence in support of legal action, to do research regarding the Board of Reference, and to assist the group in planning and carrying out its public-political campaign. During the period covered by this report [May and June, 1983] I have

> assisted with the group's incorporation, met with the group on several occasions to plan strategy, prepared press releases, formal presentations to the School Division and to the Acting Minister of Education, and organized a letter writing campaign to the Premier. In addition to this I assisted with the organizing of a demonstration and press conference at the Legislative Building in Winnipeg.

From the dossier it would appear that resolution did in fact originate from a political source. At an "off-the-record" meeting on July 7, 1983 the Deputy Minister of Education proposed that the high school be kept open, that some provincial assistance be given, and that an "outside review" of the School be undertaken. It was a variation of this suggestion that was ultimately adopted by the parties.

After numerous meetings and negotiations centering on the nature of the provincial assistance to be given, the choice of external evaluators, and precise terms of reference for evaluation, the parties agreed to a one-year review. Litigation was discontinued (but not dismissed) two days before a scheduled hearing on the Interim Motion.

The PID staff monitored the progress of the review. The Director said of this case in a letter dated December 5, 1983, "The process is ongoing at the moment, but if no meaningful action is taken following conclusion of the study, litigation may resume."

In the Spring of 1984 the Review was completed. The Reviewer did not support maintaining the high school (at a cost of about $100,000 per annum or about $5,000 per student), but he did verify the need for special programs to meet special needs in the community.

The Director met with community residents at a public forum and explained the impact of the Review, including a recommendation that a "Task Force" be established. The Task Force is to operate a minimum of three years. Its task will be to examine closely the ways in which the School is meeting community needs, to monitor compensatory education programs and to explore sources of funding to continue to meet the special needs of pupils. Membership on the Task Force includes the Superintendent, the School principal and one teacher, and two members from the Community, one of whom is the chairperson of the Committee.

At the suggestion of the Committee, and in aid of gaining wider community participation, an adjunct "Advisory Committee" to the Task Force has also been established.

Members of the various community committees have broadened their focus of concern to include the social, health and security needs of the community. In the words of one participant in these events, "This issue has given the community a 'political focus' and has given us the basis for real democratic participation. We've learned a lot about negotiation and we're ready to go after what we need for Amaranth. People know we can't be pushed around any more."

B. Focus Questions

Having described the Amaranth School case we now examine it in terms of our evaluation questions.

1. Access

When the Committee first applied for legal aid it was represented by a Winnipeg practitioner. Their representative had pursued a political-administrative solution, but he had been unsuccessful. Litigation required a much greater input of legal resources. In retrospect it is clear that it took the threat of litigation to reach a resolution.

In the course of preparing the case the PID was able to provide time, effort and expertise. Without doubt this would not have been available to the Amaranth School Committee on its own. If litigation had proceeded it would have broken new ground in Canadian jurisprudence and the PID had to prepare for some very complex issues of both law and fact.

2. Priorities

Amaranth has been described as essentially an economically depressed town. The town is composed almost entirely of the "target group" - low income people. Moreover, many of the issues in the case, such as the legal responsibility of schools to provide for children with "special needs" related for the most part to their socio-economic and minority group status, are issues that are of general importance to low income Manitobans.

While it may be that some beneficiaries of the outcome of this case are not low income, the issues preponderately affect the target population. Therefore the case can be properly said to

rank in the second category of the PID's three-rank system.

The Director noted in his report to the Department of Justice dated January 17, 1984, "In addition, upon receipt of federal funding, the Department decided to give high priority to cases involving economic and social rights under the Charter. We regard the right to education for rural and native children to be a paramount concern."

3. Activities

The case involved a full range of public interest activities, including litigation, lobbying, public relations campaigns, drafting of briefs and negotiation with government officials and defendants.

4. Skills Training

The Committee formed around the issues relevant to this case and developed some expertise in the year prior to the time the PID formally became involved. In addition to providing access to the courts - a crucial factor in effecting settlement, albeit the court action was discontinued - the PID helped the Committee to develop other advocacy skills. There is no way of assessing the impact of the political pressure exerted by the group, but it is clear that they have experience in several action alternatives. With this experience and the solidification of the community that has resulted from their common effort, the client group is better able to protect and advance its interests than it was before.

5. Nature of the Collectivity

This case grew around a common problem shared by the residents of Amaranth. While a prime issue was education for Native children, the majority of the Committee is white. The heterogeneity of the collectivity would seem to indicate that it should be seen as an aggregate, but an organized aggregate. To the extent that a small town shares a common culture and close interaction they may even constitute a group.

Whether group or aggregate is not important. By the time the PID became involved an organizational structure was firmly in place. By assisting the group in incorporating the PID change the legal nature of the collectivity and expanded its legal capacity thereby. The experience of dealing with the School issue stabilized community organization and increased concern for the general needs of the village.

6. Level of Legal Competence

The Committee seems to have had an early awareness of the possibility of legal avenues of redress as evidenced by the fact that they quickly sought legal assistance. One Committee member had had a prior positive experience as a LAM client and therefore was inclined to initiate contact. The skills developed were more political than legal initially. In the course of developing the case in its many aspects as described above, members of the Committee had to be closely involved. From the dossier and from interviews it would appear that their skill level increased and they are now more familiar with legal alternatives in the advancement of their interests.

7. Appropriateness of Activities

As described above, the PID engaged the widest possible range of activities to advance the client's interests. It would seem from the dossier that client involvement and control was maintained throughout.

Committee members and supporters were unanimous in their praise of PID staff. Staff took great pains to explain the legal process and to set forth alternative plans of action. As one member stated, "We always felt as though we were in control and that it was us who had to make the decisions." Correspondence was frequent as were visits by staff to the community and by Committee members to the PID office, where "we were always made to feel comfortable," said the Committee chairperson.

From the perspective of counsel for the Board, the PID advised a law suit in the face of clear precedents militating against success (see Patterson and Barker v. St. Boniface School Division No. 3 (1982), 19 Man. R. (2d) 51 (Man. C.A.), Tweed et al v. Assiniboine South School Division No. 4 et al (1982), 18 Man. R. (2d) 403). In doing so it took unfair advantage of the Board's weak position relative to its own legal aid financial resources. "It's a good issue from the point of view of what's happening in rural schools in Manitoba, but not something that should be litigated," counsel said. While the issue was an issue of public interest, the manner in which it was approached was not appropriate, in the estimation of opposing counsel. At very least, he suggested,

there should have been government funding on both sides in the interests of fairness and proper exposure of the issues.

An issue that might be raised in this case is the propriety of PID staff encouraging and becoming actively involved in "non-legal" avenues of resolution such as letter-writing campaigns and political demonstrations. In the opinion of the Director such involvement is permissible if it is legitimately related to the settlement of a legal dispute. In the Amaranth case the letter-writing and the demonstration at the Legislative Building took place before any action was filed. Political pressure may have prompted the defendant to seek an out-of-court settlement - a desirable result in any case.

A lawyer is not prohibited from giving "non-legal" advice to clients (see Canadian Bar Association, Code of Professional Conduct, Chapter III) so long as no conflict of interest is present, that the lawyer qualifies his/her advice and that he/she clearly distinguishes it from legal advice.

It might be said that the PID has acted as a "community organizer" giving "non-legal advice" assisting in mounting a demonstration and a letter-writing campaign. While there is nothing prima facie improper in this, it is certain that some members of the law profession would consider such activity "conduct unbecoming" members of the profession (Chapter XIV, Code). This issue will be addressed more fully in another section of the evaluation.

8. Public Interest

Few would disagree that educational rights are matters of public interest of the widest possible concern. In this case the educational institution is one supported by public moneys and it represents a crucial social and economic resource in the community involved. While the specific concerns were those of the members of one small community, the case contains implications for the "public/citizen" category elaborated above. If the case had gone to trial some important "public interest" issues would have been addressed and any decision would have had a very wide-ranging impact indeed.

In the result a community was afforded a "political focus" and residents became involved directly in the democratic process. The impact upon the community involved as well as the conduct of the School Board is likely to be enduring and profound.

In all of the other major cases discussed in this Part the "opponent" has been either "big business" or "big government" (assuming for the moment that the City of Brandon can be placed in the latter category). An "underdog" group has faced an opponent with relatively overwhelming resources. A public policy reason behind the establishment of the PID is, of course, to "even the odds". Special expertise and resources are made available to the weaker party to allow a "fair fight". In the Amaranth School case the opponent, however, a rural school board with a limited tax base, felt overwhelmed. In their perception of things they were pitted against an "agency of government". To the extent that the

PID is funded by all Canadian (at least all Manitoban) tax-payers, the Board's perception was accurate.

There may be instances where matters of important public interest are at stake, where both sides need to be funded in order for there to be a "fair fight". This matter is discussed further below.

MANITOBA SOCIETY OF SENIORS

A. Description

Even before the establishment of the PID the Manitoba Society of Seniors (the "Society") had been represented by LAM in submissions before Manitoba Public Utility Board ("PUB") hearings into applications by the Greater Winnipeg Gas Company (the "Gas Company") to increase the cost of home heating fuel. Once the PID was established the Department assumed conduct of the file.

The Director suggests that the representation afforded since the establishment of the PID is qualitatively superior to that which could be given to the Society in prior days. The successes in two matters handled by the PID during the evaluation period seem to bear out the Director's comparison. At a PUB hearing in June of 1984 the PID appeared for the Society as an intervenor. The Gas Company had applied, inter alia, for an increase in return on equity. The Society argued for a decreased return. In the result the PUB declined to order any change at all.

Earlier the Society, represented by the PID, challenged the PUB in court on the issue of awarding costs to intervenors. The PUB denied an application by the Society for costs and the Society moved for leave to appeal to the Manitoba Court of Appeal. Leave was denied, but in ruling on the motion the Court clarified the law with respect to intervenor costs. (Subsequently, the PID requested the Manitoba Governemnt to review The Public Utilities Board Act, C.C.S.M. c. P-280, with a view to making amendments

favouring intervenors.) Moreover, the PUB agreed to review its general policy on costs. It did so at a public meeting on January 24, 1984 at which the PID, on behalf of the Society, made a detailed submission. Out of this came PUB Order No. 53/84 which established that intervenors can, unless specifically excluded by provisions of the Order, apply to have their reasonable costs paid by applicants. Applicants in turn recover from consumers. "Guidelines" were appended to the Order.

Following the new policy on intervenors' costs, the Society was awarded costs and disbursements of $9,285.43 at the most recent hearing at which it appeared.

During the evaluation period the preparatory work for both the submission on costs and the hearing on gas rates was done by the PID.

With respect to the intervenors' costs, extensive research was done on policy extant in a number of (virtually all) Canadian and U.S. jurisdictions. The submission presented to the PUB contained a rationale for encouraging intervention, alternative models for intervenor support, some objectives by which it was suggested that the PUB be guided, and a series of specific recommendations. The efforts of the PID would appear to have made it easier for intervenors to appear before the PUB and to make higher quality and more detailed representations.

In the hearing on the application by the Gas Company to increase

rates the PID obtained and helped to prepare the evidence of an expert witness. To support the Society's application for costs affidavit evidence had to be prepared as well. Questions used for the cross examination of the applicant's expert witness also required advance preparation.

A review of reports submitted to the Department of Justice during the evaluation period indicate that major work on the costs submission was done by the staff paralegal while work on the PUB rate hearing was chiefly the responsibility of the Director.

B. Focus Questions

1. Access

The Society is an incorporated body established, according to its Articles, "to provide an organizational focus to, and to serve as a voice, for senior citizens on all matters affecting their welfare". Its membership stands at about 2,500 of whom about 1,700 live in Winnipeg. It has been in existence about 5 years.

The Society operates a travel service, a reproduction (photo-copy) service, and a journal, all at a profit used to defray operational expenses. It also has had a number of grants from various levels of government and from private foundations. The Society offers a variety of member support programs and services. It has never had sufficient funds, however, to cover the cost of appropriate experts to work on the preparation of PUB interventions. In its most recent intervention the Society was able to take advantage of the new PUB costs policy which was promulgated partly as a

result of the efforts of the PID. In the interests of cost effectiveness, and to avoid duplication, the Society joined the Consumers Association of Canada (Manitoba) in its intervention in the matter.

To the extent that the Society is comprised of low income people, and to the extent that other low income groups can take advantage of the new costs policy, one would have to conclude that the target population has benefitted from the existence of the PID. While the Society was represented by LAM before the PID came into existence, there is good evidence to conclude that the quality of representation has improved, having been conducted by full-time public interest professionals. Both potential frequency of access and quality have improved for the target population and coincidentally for other citizens and citizen groups.

2. Priorities

Fuel rate increases have an impact upon everyone. There is a disproportionate impact upon low income people. Therefore, this case falls into the second category of the three-level ranking - an issue that affects low income people primarily.

3. Activities

Work with the Society has focused on two specific and related issues. Litigation, research, lobbying and the presentation of a brief, as outlined in the description above, comprise the services rendered to the Society during the evaluation period.

4. Skills Training

No specific attention has been given to client group training.

5. Nature of Collectivity

The Society is an organized aggregate. It consists of a series of Regional Councils who elect delegates to a Provincial Council. An Executive Committee of eight runs the affairs of the Society from its office in downtown Winnipeg. Ten committees have been formed to conduct aspects of the organization's business.

Advocacy by and for seniors is the principal activity of the Society. For the most part members tend to exclude, as one member put it, those who are "beyond help" as well as those who are economically, and otherwise, self-sufficient. Therefore, members, in terms of financial status, tend to be lower than the norm for their age group, that is 55 and older.

6. Legal Competence

Society officers report that they have not been successful at recruiting for membership seniors who are relatively well-off. This includes retired professionals. They have not, therefore, been able to call upon a bank of volunteers with legal training or experience. Advocacy activities, prior to gaining legal aid, were limited to political lobbying.

Society officers have consulted the PID Director informally on a number of occasions both prior to and after the establishment of the PID. In interview two officers commented that they were

often not certain when they should consult a lawyer or what they could expect by way of LAM assistance.

As a result of PID involvement the Society has potentially available to it legal resources it did not have previously. Specifically, it has available moneys in the form of intervenor's costs at PUB hearings.

7. Appropriateness of Activities

PID activities have involved informal consultation and representation before the PUB. Since the evidence presented to the PUB was of a technical nature the client organization could not become highly involved in preparation. For the group members there has been little "training in advocacy" come out of the experience. Members expressed a desire for some "legal education" in addition to the service they have received to date.

In general group representatives were quite complimentary of PID staff and the quality of representation made on the Society's behalf.

8. Public Interest

Since the success of the Society before the PUB affects all consumers it is easy to conclude that a general public interest was served by PID activities. Benefits accrued to client organization members only incidentally.

LOGAN COMMUNITY COMMITTEE

A. Description

The Logan Community Committee (the "LCC") came into being in 1981, prior to the establishment of the PID, although it has been represented by LAM from the LCC's inception.

In 1981 a tri-level government plan proposed expropriation of a small, inner-city neighbourhood lying close to CP Rail tracks. The proposal saw the demolition of all housing and small businesses in the area and the construction of high-tech industry, the establishment of which was to be supported by government grants.

Area residents formed an action group to resist. One of the members of the group had been a client at a nearby LAM clinic and sought assistance from that source. The group challenged two central premises of the government proposal: that the community had disintegrated socially, and that the housing available there had deteriorated beyond all hope of reclamation.

The present PID Director, while a staff lawyer in the clinic, filed a motion to quash the expropriation. Negotiations were then entered into with the provincial Minister of Urban Affairs for the establishment of a commission of inquiry. The inquiry was established and LAM, representing the LCC, presented a comprehensive alternative community plan. The plan was developed in a series of meetings with area tenants and homeowners. The inquiry accepted

the neighbourhood alternative plan and ultimately the three levels of government abandoned the expropriation and adopted most of the LCC proposals.

The success of this representation had the apparent effect of giving permanence to community relationships and to the LCC. The focus of the LCC has more recently changed to that of a "neighbourhood development corporation". The PID now acts for the LCC as solicitors. Service provided in the evaluation period includes advice on changes in internal corporate organization, advice on funding and funding contracts, the process of expropriation settlement and the "Urban Homesteading Programme". While the group was originally formed to defend the neighbourhood, their approach now is to revitalize and rebuild the community.

The Director, in a Project Report dated January 17, 1984, described, the outcome of this case as follows:

> An ill-considered expropriation was stopped, a high quality neighbourhood plan was prepared, substantial financial resources were re-directed to the benefit of the neighbourhood, and residents have been able to participate in neighbourhood rebuilding through a community based development corporation.

B. Focus Questions

1. Access

It cannot be said that the establishment of the PID per se has accounted for greater access to legal process in the case of the LCC. On the contrary, the experience of LAM with the LCC case has contributed to the establishment of the PID. While the experience demonstrated the need and the potential for group representation,

it also demonstrated that effective group representation usually requires a tremendous input of time and resources which must be subtracted from time and resources available to service individual clients in law clinics.

In a study of the work of community legal clinics in Ontario Zemans (1981, 238) reported that most clinics cannot, or at least do not, do public interest work:

> Twenty-five [of 34 clinics funded by the Ontario Legal Aid Plan] deal only with individual clients, three primarily with groups and six with both.... Very few clinics are heavily involved in reform or community work, usually because of lack of time and other resources, but occasionally because of lack of inclination.

And further, Zemans says (at 240),

> ...[W]hat appears to be most significant is the traditional case law approach most clinics have been compelled to take.

The solicitor work now being done by the PID could be done elsewhere but it is being done by the PID because of the continuing relationship between the Director and the LCC.

2. Priorities

This case fits the highest priority classification - issues affecting low income people solely.

3. Activities

While past activities include the full gamut of litigation, negotiation, lobbying, advocacy and other training for group members, and preparation of briefs, the activities engaged in during the evaluation period are more limited, as described above.

4. Skills Training

The PID has not engaged directly in skills training during the evaluation period since needed training preceded the establishment of the PID.

5. Nature of the Collectivity

The history of development of the LCC begins with an unorganized aggregate with the common problem of physical dislocation and all of the problems attendant on losing one's home. The end result would appear to be what we have called technically a group with a common identity, defined by a common sense of social and geographical position, capable of acting as an advocate on its own behalf and on a variety of fronts. No longer is the uniting issue of dislocation in the forefront, but the group's existence goes on.

While the result described cannot be attributed to the PID directly, it is due in no small part to the efforts of the Director (whose experience with this case has contributed to his general ability to guide the PID).

6. Level of Legal Competence

The efforts of LAM before and after the establishment of the PID would appear to have increased awareness, skill, and access to legal resources. The group has a continuing legal existence and confronts legal problems on a continuous basis by enlisting the assistance of its solicitors.

7. Appropriateness of Activities

The present role of the PID in relation to the LCC, a limited role, would appear to be wholly appropriate to the legal competence of the group. Whether the PID should continue to be involved with the LCC even though there are now no outstanding litigious issues is a matter addressed below.

8. Public Interest

This case raises the issue of when a "public interest cause" ceases to be such. The issue upon which application was made has been settled. The focus has changed and the objectives of the LCC are more diverse. For the most part the PID has represented collectivities with rather more specific objectives. Activities have involved what might be termed "crisis intervention".

Over the long term the groups aided by the PID may follow the same stages of evolution as the LCC. Unless the representation has some definable ending point the result could be an accumulation of groups for which "solicitor work" is performed. One must question whether "solicitor work" is best performed by a specialized unit such as the PID or by other lawyers - either legal aid lawyers or members of the private bar. This issue is addressed again below.

MANITOBA LEAGUE FOR THE PHYSICALLY HANDICAPPED

A. Description

In November of 1981 the Manitoba League for the Physically Handicapped (the "MLPH") held a press conference exposing documented complaints regarding the home orderly service provided through the Office of Continuing Care of the provincial Ministry of Health. Service was rendered through an independent contractor, Home Orderly Services Ltd.

Complaints were that the orderlies were poorly trained, scheduling of home visits was erratic, no proper backup or emergency service existed, and orderlies could not properly identify themselves to consumers. The result for some MLPH members (a minority of some 400 consumers) was considerable trauma and discomfort. The MLPH objected to the fact that there was no means by which their members could have some influence over the service offered and that no means for review of individual complaints existed.

Complaints about substandard service were subsequently made to the Office of the Provincial Ombudsman who issued a report on January 17, 1984. A number of specific recommendations were made for changes in the service.

In the meantime a complainant had contacted a member of the private bar in Winnipeg and he in turn referred the matter to the PID. The complainant simultaneously enlisted the support of the MLPH. The MLPH made application for group legal aid. In February of 1984 a decision was made to grant assistance and the PID began to intervene.

On February 21, 1984 the Minister of Health, acting upon a Cabinet Directive to tender the home orderly service contract on a one-year basis for 1984-85, publicly issued a "Request for Proposal for Orderly Services". Prior to issuance the MLPH had been invited by the Minister to provide a representative to the group drawing up contract specifications. Since the MLPH consistently had taken the position that the provincial government itself, and not a private contractor, should be operating the service, the group declined to participate.

In March of 1984 the PID began actively to intervene in a lobbying effort on behalf of the MLPH through a series of letters and presentations to the Minister of Health. A detailed memorandum dated April, 1984 reiterated recommendations made by the Ombudsman, critically reviewed the tendering document, and once more pressed for fundamental changes to the system.

On May 4, 1984 the Minister addressed a conference of the MLPH and announced a Cabinet decision to cancel the contract with the independent operator and to begin a service run by the province. Furthermore, in June the Minister announced that he would be forming an advisory body of handicapped persons and a complaint review committee with access from any consumer of the provincial service.

Changes requested by the MLPH were substantially adopted by the Manitoba Government. As there were no further legal issues outstanding the PID closed their file and sent a letter to this effect, dated June 18, 1984, to the MLPH.

B. Focus Questions

1. Access

This matter originated with the frustration and discomfiture of individuals. It ended with the substantial revamping of the home orderly system and the introduction of a consumer advisory committee and complainant review procedure. It would be speculative to say whether or not the same result would have been obtained in absence of the PID. The complexity of the matter was not such as to require a great deal of special effort and expertise. While it may be coincidental, once the PID intervened things moved quickly, however. Also, the representations of an organization, the MLPH, would appear to have carried farther than the complainants of individual consumers. In the end the target population, to the extent that physically handicapped consumers of the home orderly service are low income, gained greater access and influence in the government decision-making process. Access is fairly permanently established. Whether or not the victory is a victory for low-income people generally is a matter of some doubt as expressed below.

2. Priorities

This matter would appear to fit the second if not the top priority classification in that the physically handicapped tend to also be low income. However, being physically handicapped is not a condition general to low income people.

3. Activities

The PID engaged in a lobbying effort. To be effective, meetings

with the MLPH had to be arranged and it is evident from the dossier that "the client" was not always of one mind. "Political" divisions within the group required considerable tact on the part of the PID staff. The MLPH was already well into lobbying and merely needed assistance in reaching the goals it had determined for itself.

4. Skills Training

No specific efforts toward advocacy skills training were made or requested. Nonetheless the client group reports a sense of increased capacity as a result of being informally "educated" by PID staff.

5. Nature of Collectivity

The MLPH is an aggregate of people most of whom share a common problem. The organization is composed of approximately 400 people who contribute $2 annually to become members. There are seven branches each of which sends a representative to a Provincial Council. The Council also includes fourteen elected individuals. The organization maintains several standing committees.

The purpose of the MLPH is to advocate new services for the handicapped and to monitor existing ones. Main areas of concern are transportation, support services, employment, and education for the disabled. The philosophy is very much one of "self-help" and independence from "professional helpers", most of whom are able-bodied.

According to discussion held by the evaluator with a part-time Commissioner of Canadian Human Rights Commission (see Henteleff, 1984) the disabled form about 15% of the general population. Of

course, the extent of disability as well as its nature varies widely. Disabled people tend to be economically disadvantaged.

6. Level of Legal Competence

The MLPH, in the course of its activities, became aware of a need for regular access to legal advice. Two prominent Winnipeg lawyers are disabled and had provided advice to the organization on occasion. Their own involvements prevented them from providing needed service however and the MLPH began to look elsewhere. When an issue involving a contract arose the MLPH approached LAM who put them in touch with PID staff. Access was therefore established before the home orderly issue arose.

7. Appropriateness of Activities

The Provincial Coordinator reports that the organization has enjoyed a good working relationship with the PID as a result of the Home Orderly case.

Assistance was given to explore legal routes and to prepare briefs when a political resolution seemed more feasible. PID staff engaged in a "legal education" effort that made MLPH members feel more competent and to continue to feel they were "advocates in their own cause". The organization feels it is now generally better able to preceive legal issues.

It is to the credit of PID staff that they have worked closely with the MLPH without appearing to violate the philosophy of the organization.

As measured by results obtained in resolving the major issue, activities would also appear to have been appropriate.

8. Public Interest

The nature of the interest involved is "public" in the narrow sense - a public of physically handicapped, comprising a small portion of the total population of the province. The public in this case is one which garners more sympathy than prisoners, for example. At least the physically handicapped are largely involuntary victims of their condition. But, like prisoners, they are an idiosyncratic minority of the larger category of low income people. They happen to be low income, but their plight is not representative of the condition of low income people generally.

Once again the general issue is how broadly must a problem be shared before it is a matter of "public interest"?

Notwithstanding that the disabled may not be typical of the impoverished, they are a minority whose rights are specifically guaranteed by the Charter of Rights. (See s.15 due to come into force in April, 1985.)

MANITOBA ANTI-POVERTY ORGANIZATION - PUBLIC UTILITIES BOARD HEARING

A. Description

The PID has worked closely with the Manitoba Anti-Poverty Organization ("MAPO") on a number of matters. (See "Social Assistance Appeal Brief", infra, Part III.)

MAPO is a service agency established in August, 1982 to provide information and assistance to Manitobans who are low income earners, on pensions or other fixed incomes, or social allowance recipients. In large part it is a "self-help" organization since it is run both by and for low income constituents. A majority of 60% of the governing board must be low income according to its constitution. With a full-time staff of three, augmented by volunteers, MAPO served about 1200 people during 1983. A MAPO welfare rights advocate described his "typical" client as a single parent with one child under the age of six years old.

When the Manitoba Telephone System ("MTS") made application to the Public Utilities Board ("PUB") for certain rate increases, MAPO became concerned about the effect of these increases on its clientele. Application was made by MAPO to LAM for assistance in preparing as an intervenor at PUB hearings on the matter. The PID subsequently represented MAPO when a certificate for aid was granted.

Work began in April of 1984 for a scheduled hearing in June. Research was conducted on the policy of welfare agencies with

regard to the provision of phones to, and the impact of rate increases on, low income people. An expert witness was contacted and prepared to give evidence.

On April 30, 1984 a pre-hearing conference was held and the PID attended. According to agreements reached at that time, interrogatories had to be prepared and submitted for response at the time of the hearing. In addition to the matter of rate increases, the PID, on behalf of MAPO, sought to have reviewed the issue of service deposits required by MTS in some instances.

MAPO's concerns, expressed at the hearing on June 6 - 8, 1984, centred upon the importance of telephone service for low income people and the impact of rate schedules, as well as other MTS policies, upon poor people. Specifically, welfare policies do not, save for rare instances, provide for a telephone allowance. Welfare recipients, as well as other low income consumers, must somehow budget for phone service out of meagre resources. What is more, since poor people do not generally have credit ratings, they must sometimes provide a deposit.

While basic phone service may seem to be a small item in the budget of an "average income family", it is large-by-proportion to those on low income.

Olga Foltz, Executive Director of MAPO, stated the problem to the PUB in these terms:

> For the person on welfare, without transportation, without money, the telephone is your access to the welfare

> bureaucracy that runs your life; it is your access to medical advice; to emergency services; to information and education. It is your only means of consumer shopping. In some cases it is your only way of doing any shopping, or of conducting any other kind of business. In many cases a telephone call is the only way you have to socialize with friends or relatives.

While the immediate concern was with the particular increases being sought by MTS, Ms Foltz indicated broader concerns in her remarks before the PUB:

> In addition to the specific cost related problems with the present system and the present service, it appears as though low income consumers have good reason to fear for the future. With rapid and continuing technological change, and with the increasing trend toward deregulation, we fear that low income consumers will be caught in the competitive squeeze. Low income consumers are users of basic and unprofitable service.

The PID representation did not prevent the PUB from granting some rate increases. The Board determined, however, that the ratio between business and residential rates should be maintained. The PID was successful in a limited way in raising the matter of service deposits: the PUB encouraged negotiations between the parties and agreed to hear the issue at a future time. On a key issue of proposed major increases in installation charges the representation again enjoyed limited success: the MTS proposal was granted only in part by the PUB. Whether the PUB would have reached the same conclusions in absence of PID representations cannot be determined.

B. Focus Questions

1. Access

PID staff have developed, through experience, considerable expertise

in dealing with regulatory bodies, the PUB in particular. MAPO and the PID have worked closely together on a variety of matters. MAPO's philosophy is one of "self-help" and the PID, finding this philosophy consistent with its own objectives, gives informal assistance and advice as necessary. In this instance more was needed. The PID was able to offer its skill and to afford an opportunity for the first time to have the concerns of poor people put forward at a PUB hearing on telephone rates. One can reasonably conclude that this representation would not have occurred without the existence of the PID.

2. Priorities

The issue involved the disproportionate impact upon poor people of telephone rate increases and other telephone company policies. Therefore, the matter falls into the second of the three-tiered priority classification.

3. Activities/Skills Training

The PID has an on-going relationship with this self-help organization. Its activities in relation to this particular matter should not, therefore, be evaluated in isolation. The activities engaged in by the PID to assist MAPO have been comprehensive. (See Part III, "Law Reform and Advocacy Assistance.")

4. Nature of Collectivity

MAPO is best described as an aggregate, the common factor being

poverty, usually evidenced by receipt of Social Assistance. The organization began in meetings among welfare recipients along with "resource people" including a lawyer, a union activist, and a worker from an organization providing assistance to unemployed workers.

In August of 1982 MAPO incorporated as a non-share corporation with a constitution that requires at least 60% of its Board of Directors to be low or fixed income. Its goals are education of poor people regarding the welfare system, promotion of public awareness regarding the plight of the poor, advising, assisting and representing the poor, and cooperation with organizations with similar goals.

Start-up funding came from a church organization and since its inception MAPO has been able to get funds from a variety of government and non-government sources.

Membership - open to anyone who expresses an interest - is estimated at 400 to 500 persons most of whom are low income.

5. Level of Legal Competence

MAPO has always had the assistance of legal aid lawyers. One of the founders is a staff lawyer in one of the legal aid clinics. The PID paralegal has also been involved with MAPO since its inception. With this assistance its level of legal competence has incrementally increased in its two years of operation.

Legal Aid used to hold regular "welfare rights clinics". Now MAPO has taken over this function. LAM also provided welfare advocacy services which now can be provided by MAPO at less cost.

Appearance before the PUB represents an extension of MAPO's activities that would not have been possible without assistance from the PID. A staff member reported that MAPO would now contemplate further appearances before regulatory tribunals - even to the extent of going on their own if necessary. Thus the capacity and legal competence of MAPO has increased as a result of PID efforts.

6. Appropriateness of Activities

As indicated elsewhere the PID has assisted MAPO to develop its capacity. Its appearance before the PUB represents a new height. MAPO has indicated its satisfaction and its intention to continue cooperative efforts. Shortly after the conclusion of the evaluation period the PID began to represent MAPO in a new matter - a hearing before the Canadian Radio-television and Telecommunications Commission on the issue of "deregulation" of long distance telephone services.

7. Public Interest

Possibly as a result of PID representation, increased charges to all telephone consumers have been minimized. At least to that extent the public interest has been served.

The public interest has also been served by facilitating the participation of citizens in the governmental process. This is so both in regard to the specific issue of telephone charges and in a more general sense. The organization served has increased its "self-help" capacity and its confidence so that it is better prepared to face future public interest issues.

In relatively few cases can one point to a tangible, economic benefit resulting from the support of self-help groups. Here, in addition to marginal success before the PUB, the strength of MAPO has reduced demands upon LAM staff lawyers thus saving tax dollars (or at least freeing legal resources for other use).

In several ways one can conclude that the public interest has been served.

HEADINGLEY INMATES' COUNCIL

A. Description

The PID has represented the inmate-elected Council of residents (the "Council") of Headingley Correctional Institution (the "Institution") in three unrelated matters. The Institution is the provincial jail for the area designated until very recently as the Eastern Judicial District of Manitoba, an area which includes the City of Winnipeg. Inmates on sentence in the Institution are, in most cases, serving less than two year terms. The Council is recognized by the Institution's administration as representative of inmate interests.

The PID acted for the Council as an intervenor before the Public Utilities Board ("PUB") in the matter of an application by the Manitoba Telephone System ("MTS") to approve, inter alia, a telephone calling system for inmates at the Institution. The calling system allows inmates to telephone from "pay phones", both within the local calling area and long distance, but on a collect basis only. Because such calls are considered by MTS to be "operator-assisted" the fee for local calls is 75 cents (versus 25 cents for normal "pay phone" calls). The necessity for such a system was created by Institution policy not to allow inmates to carry cash.

Inmates are opposed to both the 75 cent charge and the local collect calling system on the grounds that the charges are a financial hardship to the families of inmates and that the system

serves as a deterrent to essential calls regarding employment, personal affairs, and legal matters. Approval was also opposed on the legal basis that the rates charged are "unreasonable and may constitute an unjust and discriminatory rate, contrary to the provisions of... [applicable provincial legislation]".

The PUB hearing on this matter is the same one referred to earlier under the heading "Manitoba Anti-Poverty Organization - Public Untilities Board Hearing". At that hearing the PID Director, in effect, "wore two hats".

Preparation for the hearing involved meetings with the Council, correspondence with PUB and MTS counsel and organization of the evidence needed for the hearing. A local sociologist who had done prison research was contacted by the staff paralegal. This expert agreed to give evidence on the general social and rehabilitative value of communication between incarcerated people and the outside community. Interrogatories were also prepared, addressed to MTS. Replies were received and examined. The chairman of the Council was also prepared by the PID to give evidence. PID staff also had to arrange with Institution authorities for this inmate to be released to attend the hearing.

Prior to the hearing the PID assisted the Council in preparing a "news release" for local media stating their purpose as intervenors.

Following the hearing the PUB reserved decision on this and other matters and the Director wrote to the Council informing the group of results.

The decision of the PUB was released as Order 103/84. The Order noted that insufficient time had been allowed to assess the calling system. The Order stated as well,

> The problems with the service...are primarily the result of Headingley's administrative policy and hence the Board's role in providing any solution to the problem must be limited.

At the hearing the Council, through its representative, had suggested alternatives to the calling system. The Order stated:

> These alternatives along with others that may be appropriate should be investigated by,...[MTS] in consultation with the parties involved. Recognizing the importance of the service the Board will confirm the [existing system] order with the proviso that...[MTS] report to the Board on the results of the trial offering and discussions with the parties involved regarding alternatives within four months of the date of this Order.

Following the end of the period of evaluation covered by this report meetings were arranged to involve the Council, Institution administration, and MTS. Currently under study by the Council (with PID assistance) is a proposal by MTS to install dial phones electronically limited for free local service only and other dial phones for collect long distance service only. The proposal would appear to have resolved the telephone problems encountered by the inmates.

Another matter in which the Council became involved, and in which it was represented by the PID, was the untimely death in the Institution of an inmate. A suicide occurred in May, 1984. An inquest was held in Provincial Court. The Council was of the opinion that had different custodial procedures been adopted by the Institution the suicide might have been prevented. They were

also eager to improve such procedures so as to prevent potential future incidents of a similar nature.

The inquest was held in June of 1984 and the Judge has yet to issue her report. Of particular concern to the Council is the absence of psychiatric counselling for inmates and procedures for dealing with inmates who are in the medical unit for psychiatric reasons. In preparation for the inquest the PID staff researched substantive and procedural aspects of The Fatality Inquiries Act (Manitoba), met with the Council to obtain instructions, interviewed and obtained statements from inmate witnesses, reviewed institutional procedures, and prepared questions for cross-examination.

The third matter in which the PID represented the Council concerns inmate disciplinary procedures at the Institution.

In 1983 public attention was drawn to inadequate conditions at the Institution by a series of incidents including a report by the Workplace Safety and Health Branch of the Provincial Government and an adverse report by the Manitoba Government Employees Association. A "Review Committee on Adult Corrections" was established by the Provincial Government and the Committee issued a Report (1983) in September, 1983. The Report identified a number of problems at the Institution to which government attention, it advised, should be addressed. Included among the areas of difficulty found by the Review Committee (1983, 63-64) was the area of inmate discipline:

> A key problem area which the Committee has found, concerns the apparent inconsistency with which inmate discipline is handled in the institution. This includes the handling of daily disciplinary problems by line staff through to the structure and procedures

> of the institutional Disciplinary Boards. The principal concern we raise surrounding the daily operations of the institution relates to the absence of clearly defined rules and expectations for behaviour from both staff and inmates alike.... Since the imparting of the meaning of justice and fairness is what the correctional system is all about, an investigation of the operation of...[Disciplinary Boards] is required.

The PID, on behalf of the Council, explored legal means of ensuring that an improved discipline system be devised. In this regard the assistance of other LAM staff experienced in correctional law was called upon. A meeting was held with the Superintendent of the Institution and he agreed to cooperate in an examination of the disciplinary process. He also provided the PID with copies of departmental policies.

A legal aid certificate issued in April of 1984. A formal PID file was opened on the matter of disciplinary procedures at the Institution.

Since the issue potentially involves procedures in all provincial correctional institutions the Acting Director, Adult Corrections and the Acting Assistant Deputy Minister of Corrections were brought into discussions by the Institution's administration. In the result a "work group" has been established and the PID represents the Council on this "Inmate Discipline/Grievance Committee". The committee is to draft proposals for improved procedures and was, as at the end of the period covered by this Report, meeting regularly.

B. Focus Questions

1. Access

As is the case with the representation of federal inmates (see "Stony Mountain" supra), prisoners are generally low income and are disproportionately members of economically disadvantaged minority groups. Without access to the PID prisoners would not as a group be able to afford representation. LAM has represented individual inmates in "correctional law" cases, but the issues in which the PID has been involved on behalf of the Council go beyond the usual scope and capacity of the LAM clinics.

2. Priorities

Whether being incarcerated is a problem of general concern for low income people generally is a matter of some debate. The issue is addressed above in the section on "Stony Mountain - Double Bunking" and further on in this Report.

3. Activities

Activities have, appropriately, related to group concerns rather than individual cases, albeit these concerns may have arisen in incidents affecting individuals, as in the inquest described above.

The dossier provided to the evaluator on the three matters described above show that the paralegal has kept close contact with the client group.

Effort has been made to make use of routes to conciliation other

than court challenges. In view of the present state of the Manitoba Correctional System it would appear that these alternative routes are quite appropriate: the System has undergone many recent changes in personnel; policy review is a top priority.

4. Skills Training

The Council is made up of inmates serving sentences shorter than those being served by the Stony Mountain inmates (see supra). They have less prison experience and less experience on average with the legal system. However, the impermanence of the Council precludes extensive efforts directed toward "skills training". No note of such effort by the PID exists in the dossiers provided to the evaluator.

5. Nature of Collectivity

The collectivity of Headingley inmates is described in the Report of the Review Committee on Adult Corrections (1983, 15). Almost half are 24 years of age or younger. More than half are single. More than a third are Native or of Native ancestry.

The collectivity is best described as an organized aggregate: an aggregate because members share the common problem of incarceration, organized by virtue of formal procedures for electing a representative Council.

Racial divisions among the members of the collectivity sometimes lead to acute conflict. One of the members of the Council represents the "Native Brotherhood Society".

6. Legal Competence

Some of the comments made earlier with regard to federal inmates can also be said of inmates at Headingley. The prison experience, to some degree, creates legal awareness and some degree of skill. Headingley inmates are less experienced on average.

7. Appropriateness of Activities

As noted above ("3. Activities"), the activities engaged in by the PID appear to have been appropriate to the peculiar circumstances of change in the provincial correctional system. Correspondence in the disciplinary matter appears to indicate that corrections officials would prefer to see the PID as representing LAM rather than prisoners per se. The PID has made clear that it is inmate interests they represent.

8. Public Interest

The question of whether inmate issues are "public interest" issues and, in particular, are issues of shared concern to low income people is a question addressed at several places in this Report. (See "Stony Mountain - Double-Bunking" supra). The question is discussed further in an ensuing section.

With regard to the telephone issue, it has been suggested that it is a localized issue and therefore not one of "public interest". The inquest and the disciplinary issue, on the other hand, involved conditions general to provincial correctional institutions. To the extent that prisoners' rights are public interest matters these latter matters were properly within the PID purview.

WINNIPEG REMAND CENTRE

A. Description

Conditions at the Winnipeg Remand Centre ("WRC"), occupying one floor of the Public Safety Building (city police headquarters), have long been a source of local public concern.

The facility was constructed as a police lock-up. Conditions in the facility were publicly criticized when it was operated by city officials and it was taken over by the Province in the mid-1970's at which time it became known as the Winnipeg Remand Centre.

The change of responsibility for its operation did not end problems at the facility, however. Complaints continued to appear in the local media. Several inmate suicides heightened concern.

In March of 1982 a special investigatory committee of the John Howard and Elizabeth Fry Society of Manitoba issued a report on pre-trial detention in the Province. The report was generally critical of facilities but most damning of the WRC. The WRC, the report urged, ought to be replaced.

Similarly, the Institutional Physician said in a report covering the period April 31, 1982 to May 1, 1983:

> My experiences at the WRC over the last year have confirmed for me the belief, widely held in Winnipeg, that individuals detained prior to trial are treated in many ways, including the provision of medical services, worse than convicted criminals....Under-occupation, overcrowding, lack of sufficient exercise and fresh

air, lack of sufficient hot shower water, and inadequate laundry facilities all contribute to remandee irritability.

The PID Director first became involved in this issue prior to the establishment of the PID. In April of 1982 a Statement of Claim was filed in the Court of Queen's Bench in the name of a remandee as representative - a class action. The filing of the suit was followed by some complex interlocutory procedures including a demand for particulars, a motion before the Referee, inter alia, to strike the claim (heard in October 1982), and an appeal (decided March 14, 1983) from the decision of the Referee to a Judge. Finally, there was an appeal of the interlocutory motion to the Manitoba Court of Appeal in July of 1983. In the result the class action was not allowed to proceed. To avoid procedural barriers the PID, now well-established and experienced in "prisoners' rights" cases, filed suit in the names of eleven different plaintiffs, all WRC inmates or former inmates, and all alleging that the conditions in the WRC constitute "cruel and unusual treatment or punishment" contrary to the Charter of Rights and Freedoms and the Canadian Bill of Rights.

The matter is now in the stage of Examinations for Discovery and has yet to be set down for trial The trial is not likely to begin before the end of 1984.

In preparation for trial PID staff have been searching for experts and assisting the experts retained prepare their evidence. Medical experts in the areas of occupational health and psychiatry have been retained and they have begun their investigations.

The Director also negotiated with government officials to attempt to obtain a firm commitment to construct a new, more suitable facility. No such promise could be given.

B. Focus Questions

1. Access

This case began prior to the establishment of the PID, therefore the PID cannot be said to have been necessary for the clients to have brought their suit. It may be, however, that the quality of representation has been better than it might have been without the specialized services the PID offers. Experience with the Stony Mountain Double-Bunking Case and with the three Headingley Correctional Institution matters (supra), together with this one, have created a degree of expertise in prison-related matters among PID staff.

2. Priorities

Once again, while this matter would appear to staff to fit the highest priority category, the question remains as to the "representative" character of the issues involved for low income people generally.

3. Activities/Skills Training

Activities have been limited to some very complex litigation matters, preparation for trial, and negotiation. No "client group" exists <u>per se</u>.

4. Nature of Collectivity

Remandees are by and large low income and an aggregate lacking organization. As their association is ephemeral they tend not to be inclined toward collective action.

5. Level of Legal Competence

Remandees vary in their experience with the legal system. Recidivists, however, are among the least likely to obtain judicial interim release and therefore are most likely to accumulate in the WRC. While the more experienced may have a relatively high level of legal awareness and manipulative skill they may be disinclined to complain of conditions in a short-term facility - a facility to which they do not intend to return. For these reasons complaints, before the cases now being represented by the PID, have generally been made most vociferously by sympathetic, public-spirited observers such as the John Howard and Elizabeth Fry Society of Manitoba.

6. Public Interest/Appropriateness of Activities

As noted previously, some regard issues such as conditions in the WRC as "narrow" ones. The "public" of alleged criminals may only be coincidentally poor.

Whether this issue is a "poverty law" matter or a "prison law" matter, it is at least a matter of wide spread public concern in Winnipeg. This is evidenced by professional attention paid to the WRC and by media coverage.

In the description above it was suggested that problems in the WRC have gone on over a considerable period of time. It remains to be seen whether or not a court challenge under the Charter will have a significant ameliorative effect.

SUMMARY OF MAJOR CASES

A. Referral Routes

One of the terms of reference for this evaluation is to consider the value of having public interest law services offerred in the context of a public legal aid plan. It is significant, therefore, to note that eight of the nine major cases were either referred through LAM staff lawyers or came to the PID as a result of clients first approaching LAM. One case was referred by the private criminal defence bar. Two cases were referred by private practitioners as well as LAM, but independently.

B. Access

Had the PID not been in existence it is likely that at least five of these cases could not have been pursued. Appropriate legal services would not otherwise have been available.

In a further three cases there was evidence that representation was at a level of quality not possible without the PID, albeit that absence of the PID would not have prevented pursuit of the case.

In one case the major work was completed before the PID came into existence. The sort of work done by the PID could have been done by other lawyers. The sort of expertise that the PID was formed to develop was not used in that instance.

In general, the establishment of the PID, as evidenced by their involvement in these nine cases, has achieved the goal of affording

greater and better access of citizens to the legal and administrative processes.

C. Priorities

Five of the major cases were ranked by the PID as "top priority" --affecting only low income people. Three of these were "prisoners' rights" matters and one involved services for the handicapped. In each instance it was observed that the client group, although low income, was not typical of low income citizens generally. The fourth top priority case involved the preservation of a low income neighbourhood.

The remaining four major cases were "middle priority", that is, they affected low income people disproportionately.

In general, the PID has given priority to issues of importance to low income citizens in keeping with its mandate.

D. Activities

Activities of PID staff relating to major cases have run the full gamut from "solicitor work" through a major trial in the Federal Court of Canada (Trial Division). In most of the major cases a variety of activities was demanded. Alternative courses of dispute resolution were advanced simultaneously. In one case activity was limited to lobbying; one involved only a presentation to a regulatory body.

E. Skills Training

Advocacy skills training has been incidental to work on major cases. Four groups reported that by associating with the PID they were able to pick up some skill that would be of future use in pursuing their advocacy tasks.

F. Nature of the Collectivities

The clients among the cases reported in this Part ranged from unorganized aggregates (plaintiffs in test case litigation) to highly organized aggregates who may in fact show characteristics that might identify them as groups by the nomenclature introduced in Part I.

Among those cases in which the represented collectivity was at all organized, the degree of organization varied. In five cases the organization is relatively permanent, organizational goals are diffuse, the organization existed prior to the issue which gave rise to PID assistance. In one case the organization arose over the legal issue but became relatively permanent and diffuse as a result of their taking legal action.

In only one case did an organization arise to address the legal issue and exist only for that limited purpose.

Characteristically, clients in major cases have been organized aggregates.

G. Legal Competence

Only one of the organizations represented among these nine major cases already had access to lawyers or experienced advocates. The remainder reported little knowledge of or experience with the aspects of the legal or administrative system with which they were forced to deal.

Most of the organizations reported that their experience with the PID was "educational" and that PID staff made patient and concerted efforts to make them better informed. Therefore, legal competence was increased.

One organization expressed a need for further "legal education" and indicated they were not really made aware of the potential use of legal representation in pursuing group public interest objectives.

H. Appropriateness

In all but one instance the activities of the PID appear to have been appropriate to the nature of the problem, to the legal competence of the client, and to the efficient use of a specialized legal resource. (The exception--provision of solicitor services--is discussed further in Part V.)

I. Public Interest

In every one of the nine major cases it could be concluded that the

"public interest" had, in some respect, been served. Either an issue was effectively aired and a point of view previously unrepresented (or under-represented) was heard, or a policy was addressed that might be seen to involve the overall interests of the community.

What constitutes the public interest is, as we noted in Part I, a matter of moral evaluation. Therefore, not surprisingly, not all observers will agree that each and every one of the nine major cases is validly "in the public interest." The perspective of informed observers is the focus of Part IV.

PART III

OTHER ACTIVITIES

INTRODUCTION

Other than direct representation of groups the PID, according to its mandate, has engaged in a number of other activities, some of which are as involved as many of the major cases discussed in the Part preceding. These activities--both major and minor--are discussed in this Part.

It would be impossible to discuss all of the activities of the PID. In circumstances where we could not be comprehensive a number of illustrative matters are included.

Finally, it should be noted that the length of the discussion herein may reflect the extent to which written records exist more than the amount of time expended on a matter by PID staff. Or, it may reflect the importance accorded the matter by staff who have taken time to explain matters to the evaluator.

BRIEF ON SOCIAL ASSISTANCE

A. Description

The PID has cooperated with the Manitoba Anti-Poverty Organization ("MAPO") to effect changes in the laws affecting Social Assistance in the province. The staff paralegal was a founding member of MAPO. MAPO was established to assist low income wage earners, people on pensions or other fixed income, and social allowance recipients. Organization workers and volunteers provide informal advice and assistance with respect to the rights and obligations of welfare recipients, and they make representations on behalf of welfare recipients.

Both MAPO and the PID have a common interest in welfare (Social Assistance) legislation and policy in Manitoba. In the case of the PID, concern is in part because about 80% of LAM clients are on welfare or have incomes below Social Assistance level.

In September 1982, shortly after the PID began its operation, the staff prepared and presented a brief to the Manitoba Task Force on Social Assistance, a Government inquiry.

The PID brief listed fifteen recommended changes in policy and procedure affecting various aspects of the welfare system. While the Task Force incorporated suggestions from the brief in a general sense in its final report to the provincial government, the report was less than specific in recommending the means by which changes should be implemented.

During the evaluation period the Department, again in cooperation with MAPO, decided to focus specifically on the appeal procedures provided by The Social Allowances Act and The Social Services Administration Act. They decided as well to consult with and enlist the support of a wide variety of community organizations to whom the issue was of concern.

The staff lawyer and paralegal first produced a comprehensive memorandum suggesting amendments and presenting a brief rationale for each suggested change. This material was sent to some 19 organizations to solicit opinions and support. When the Director was subequently questioned by the Deputy Minister of Employment Services and Economic Security about other organizations interested in and supportive of PID proposals, he was able to provide copies of ten letters immediately. Critical response from other organizations was also useful in preparing the final submission to the appropriate Minister.

On May 8, 1984, the PID, together with MAPO submitted to the Minister of Employment Services and Economic Security a document entitled "Reform of the Welfare Appeal Process in Manitoba". The Minister responded positively indicating that his staff and that of the Attorney General were giving the proposals contained in the document careful attention. The Director subsequently met with the Deputy Minister on the matter.

During the month of May 1984 the summer student working in the PID also did some research relevant to welfare appeals and the possible applicability of the provisions of international law.

The final outcome of this law reform effort has yet to be determined. As at the end of the evaluation period the file was considered still to be open.

B. Comments

The activities described above fit the objective of the PID to promote law reform through research and presentation of proposals and briefs, rather than through litigation or representation of specific groups or organized aggregates. Some of the "focus questions" are applicable in these circumstances, while others are not.

1. Access

If the PID proposals are implemented into law the result will be a more accessible appeal procedure and one which will include welfare recipients as decision-makers (i.e. each Appeal Board would have as a member a recipient of Social Assistance). The target population will then have benefitted.

The establishment of the PID and the links it has forged with other community organizations would appear to have facilitated the production of a well-researched set of proposals, with clear community support, to be presented to the provincial government. The quick response given by government officials indicates that the PID enjoys a high level of credibility.

2. Priorities

The population affected obviously fits the highest priority category.

3. Nature of Collectivity

Welfare recipients are an aggregate. Moreover, they constitute an aggregate not only highly disparate, but also resistant to any sort of organization which would require individuals to identify themselves as being "poor". The ideology of capitalist states encourages people to conceive of themselves as being morally responsible for their own economic condition. Poverty is ideologically conceived of as a "moral" rather than a structural problem. (See generally Chaim I. Waxman, The Stigma of Poverty, 1977.) This is so even among those who are most "victimized" by a social system which tolerates wide disparity of socio-economic condition. A relative minority of poor people are able to engage in the social analysis necessary to strike through ideological barriers and to comprehend the overwhelming limits of social structure.

Welfare recipients are a disorganized aggregate and an aggregate likely to remain largely disorganized.

4. Level of Legal Competence/Appropriateness of Activities

For reasons indicated above the aggregate of welfare recipients in our socio-economic system is unlikely as a whole to develop a high level of awareness of a need to organize to confront common legal problems. Poverty is apt to be seen as a temporary condition, a personal attribute, or a condition unrelated to social structure. Poor people may also be overcome by a sense of powerlessness that is not at all an irrational response to objective circumstances.

While the activities of the PID have not altered the level of legal competence of the "constituent group" in any measurable degree, the efforts undertaken would appear to be appropriate. That is, the PID has taken action on its own on behalf of the aggregate rather than waiting for a "group representation" application which, in the circumstances, might never appear. Cooperation with MAPO seems an appropriate strategy.

5. Public Interest

Few would disagree that poverty and government social support programs are matters of public interest, particularly in the difficult, economic times Canada is presently and has recently been experiencing. (See generally, J. Harp and J. Hofley, eds., Structured Inequality in Canada, 1980. Particularly Section I, "The Basis for Concern.") In addition the issue of "fairness" in administrative proceedings has been the subject of a number of recent court cases. The salience of the issue in Canadian jurisprudence as well as the Charter of Rights and Freedoms (s.7 and s. 11) give added support to the conclusion that welfare and particularly related appeal procedures are matters of "public interest". (See generally David Mullan, "Unfairness in Administrative Processes", Isaac Pitblado Lectures on Advocacy, 1983, 68.)

PRISONERS' RIGHTS - INFORMAL REPRESENTATION

A. Description

Some critical incidents among inmates at Stony Mountain Institution (see "Stony Mountain - Double-Bunking", Part II supra) led to administrative reaction. The PID intervened on an informal basis to represent inmate interests and to calm an increasingly volatile situation.

In May of 1984 alleged assaults by inmates against officers and an alleged hostage-taking, among other incidents, led to a "lock-down" being ordered by the Warden, that is inmates were kept in cells most hours of the day and night and privileges were severely curtailed. A number of permanent changes in the institution's security arrangements ensued. Staff began vigorous security enforcement and allegedly abused inmates and inmates' privileges in the process. Efforts by prison staff to consult with the Inmate Welfare Committee (the "Committee") prior to instituting changes were reduced.

The Committee formally applied for assistance from the PID to explore possible court action, prepare press releases, and draft letters of complaint to the Solicitor General. While it was determined that court action lacked legal merit, permission was given by the LAM Executive Director for the PID to provide informal assistance to the inmates' Committee on other avenues of redress.

In July, 1984 two officers were killed in the institution and a

previously volatile situation deteriorated even more. The PID at this point (mid-July) experienced difficulty in maintaining access to the client group during yet another "lock-down".

Members of the Committee were of the opinion that a great deal of the tension in the institution was created by overcrowding and by double-bunking (see supra) in reception cells. When contact was made members of the Committee requested the PID to assist them by making public the full extent of unsatisfactory prison conditions, and by entering into negotiations on their behalf with prison administrators. Very shortly a meeting was arranged with the Warden. In the same time period PID staff were interviewed by the local media. In this way the PID could gain access to the general inmate population to tell them that their interests were being pursued. All this in the hope of calming the situation.

Toward the end of July the Committee chairman and the PID paralegal were able, with the Warden's approval, to release a joint memorandum to the inmate population advising on procedures gradually to end the lock-up.

As the evaluation period covered by this Report came to an end all PID staff were involved to some extent in calming the very explosive situation that had developed at Stony. In addition to contact with prison staff and inmates, the Department was in regular contact with members of the Citizens' Advisory Committee, a group that also aimed to ameliorate the situation and to avoid further violence in the institution. An effort to force the

Solicitor General to intervene and to mount an inquiry was redoubled.

B. Commentary

One is led to speculate whether conditions at Stony and the safety of both inmates and staff has been preserved in some degree by PID activities. If no measurable good came of them, surely they could not have done much harm.

In the past inmates have either gone without a "legal voice" in the midst of incidents such as occurred at Stony, or they have depended upon the goodwill of private practitioners. (The more cynically minded would say that intervening private practitioners may have acted out of a desire for publicity rather than for higher motives.) As advocates for prisoners the PID may at least have assured inmates that their complaints were being heard, if not acted upon. Hope may have forstalled violent reaction.

Once again the issue must be raised of whether prisoners' rights are matters of public interest peculiar to low income people. In the sense that the preservation of life is a <u>public issue</u> - a philosophy underlying our criminal law - the PID's actions in these critical matters can clearly be characterized as being "in the public interest".

Another criticism that can be raised in these circumstances is the "localized" nature of the issue. The situation in a single prison was at issue and therefore one might question whether it constituted a matter of "public interest".

ADVOCACY MANUAL AND CONFERENCE

A. Description

During the evaluation period preparatory research for an "Advocacy Manual" was substantially completed. Much of the work was done by two law students hired in each of the two summers included in the evaluation period. The manual now has to be reworked so as to be clear, concise and devoid of technical detail not essential to the working lay-advocate. (The PID staff lawyer, who incidentally holds a Master's degree in English, is doing the re-write.)

The Manual will be a "how-to" book with sections organized under pertinent questions such as "How do you know what you want?", "Who has what you want?", "What do you need to know in order to get what you want?"

Included in the Manual is detailed information on the physical setting of hearings, such basic information in "table" form as where they are held, how many people are present, whether one should sit or stand when speaking, whether or not smoking is permitted, etc. This detail is included on the premise that the more information the advocate has that will make him/her feel at ease and familiar with the set-up, the more the advocate can concentrate on giving an effective presentation.

The point of the Manual is to facilitate the operation of "self-help" groups by sharing the experience and expertise of the PID.

As well, self-help groups will need to rely less upon the PID and to that extent staff time is freed to be spent on the more complex of public interest issues.

The "Citizen's Self-Help Manual" is to be released in time for an Advocacy Conference to be staged by the PID. The present staff lawyer, Lawrie Cherniak, who has considerable experience as a conference and community organizer, a city councillor, a labour lawyer, and a teacher, has been delegated major responsibility for both the Manual and the Conference.

As originally conceived the Conference was to bring together both community leaders and potential leaders on the one hand, and government social service officers and members and officials from administrative tribunals on the other. Through a series of workshops and plenary sessions the two groups were to have gained an appreciation for one another's roles and a sensitivity for one another's problems.

Practical considerations have required scaling down of the original plans for the Conference. The intention now is to focus upon advocacy training for some 75 members of self-help groups or potential leaders of such groups. The Conference is intended to take place in Winnipeg over a period of a day and a half some time in November. Topics are to include:

1. How to deal with the expert witness - your's and their's.

2. How to present a case involving evidence.
3. How to prepare an oral or a written argument.
4. How to prepare a case prior to hearing.
5. How to conduct meetings.
6. How to organize advocacy groups.
7. Demonstrations on specific issue advocacy.

Participants will come from throughout the province.

B. Commentary

One of the stated goals of the PID is "To provide advocacy training to assist citizen groups in representing themselves". Quite obviously both the Conference and the Manual are directed toward fulfillment of this goal.

The PID is in a unique position in two respects. First, the staff has a broad familiarity with regulatory and other administrative agencies through direct experience and through the support it gives to such groups as the Community Unemployed Help Centre and the Manitoba Anti-Poverty Organization (described in the next section of this report). This experience is unique in the legal community.

Second, as a publicly-funded agency the PID is not forced to conserve its time for specific, paying clients. It can serve a public legal education function, without concern for "billable hours." It can afford to do a good job.

On the assumption that the Manual will be useful and that the Conference will be successful, the result of this effort will be

to increase the "legal competence" of what self-help groups may participate in the Conference or use the Manual. The workshops and materials have the potential of increasing legal competence in all three of its aspects: "awareness" of the existence of shared legal problems, "skill" in effecting legal solutions through improved advocacy, and "access to legal resources" by being able to make use of the considerable experience of the PID and knowledge of the workings of governmental agencies.

Since an effective democracy requires citizen participation in the governmental process both the Conference and efforts spent on producing a Manual can be said to be activities "in the public interest".

LAW REFORM AND ADVOCACY ASSISTANCE

As part of its general mandate to promote law reform the PID has engaged in some efforts not classifiable as a "formal" or "informal" representation or consultation.

An example of a general law reform project is the assistance given to the Manitoba Police Commission in planning and drafting legislation. A bill has been enacted, but not yet proclaimed, which allows complaints against the police to be reviewed by a panel of citizens. The PID Director is coincidentally Vice-Chairman of the Manitoba Police Commission. His position allowed the sort of access to the Commission that the PID would not otherwise have enjoyed. The PID would have been involved in this project regardless of the Director's position on the Commission and his time spent on the matter was approved by his superiors at LAM.

The PID Director also sits on a committee, formed by the provincial Attorney-General, to prepare a proposed reform bill dealing with class actions. The experience and special interest of the PID in this area allows the Director to give valuable input to committee deliberations.

The PID also gives ongoing assistance to three "self-help" organizations by assisting the organizations in their advocacy activities:

1. The Community Unemployed Help Centre (the "UHC")

The Director is counsel to this organization established primarily to assist applicants for Unemployment Insurance benefits. The staff paralegal was formerly an "advocate" employed by the UHC. Advocates assist in the Unemployment Insurance appeals process. During 1983 more than 3,000 people were assisted by the UHC. Prior to the establishment of the PID the UHC was involved mainly in assisting in individual cases. The resources of the PID, in the opinion of the Director, have allowed LAM to give the UHC more effective assistance in such areas as identifying test cases and developing advocacy skills.

2. Manitoba Anti-Poverty Organization ("MAPO")

MAPO was founded by a group including a LAM clinic staff lawyer at about the same time as the PID came into existence. Among its other activities (described in Part II of this report), MAPO provides advocacy services in the course of welfare appeals before the Social Services Advisory Committee. Similar to the assistance given the UHC, the PID has helped MAPO to develop more effective advocacy services.

3. Consumers Association of Canada (Manitoba)

The President of the Manitoba CAC is a lawyer who does much of her work for the organization on a volunteer basis. Her office, coincidentally, is in the same building as the PID. She reports that informal association between the CAC and the PID, the Director in particular, has been of great benefit to the CAC. PID staff have assisted in bringing issues to the CAC's attention, by meeting with members, and by providing informal training in advocacy. The CAC is left with a heightened legal competence, in her view.

EDUCATIONAL ACTIVITIES

The PID has developed an expertise in some areas of law and practice which is unique in Manitoba. Some effort has been made to share this knowledge within the law profession.

The Director wrote and presented the following:

1. "The Class Action Remedy in Canada", Isaac Pitblado Lectures on Advocacy: Rights and Remedies - New Developments, Winnipeg. The Law Society of Manitoba, 1983, at 153. (Lectures delivered in February, 1983 under the joint sponsorship of the Manitoba Bar Association, the Faculty of Law, University of Manitoba, and the Law Society of Manitoba.)

2. "The Fairness Doctrine and its Application in Recent Canadian Cases", prepared for the Law Society of Manitoba, Hecla Island Residential Seminar, May, 1983 and reproduced in 1983-1984 Law Society of Manitoba Bar Admission Course materials on Administrative Practice.

The Director also lectured in the Bar Admission Course and at the University of Manitoba in the clinical administrative law course.

On December 3, 1983 the staff of the PID put on a seminar for LAM staff titled "Identifying Public Interest Issues". A bibliography was provided along with an outline. Topics covered were: "How to Spot the Issues", "Investigating and Planning a Case", "Dealing with Legal Aid Administration", "Help from the Public Interest Department".

The PID staff also participated in a three-hour presentation within a "union counsellor course" sponsored by the Winnipeg United Way and prepared an article on the PID for publication in Just Cause, a publication of the Canadian Legal Advocacy Information and Research Association of the Disabled.

MINOR INFORMAL FILES

In the daily work of the PID phone calls are answered, contacts are made. Sometimes the Department is asked for advice and information which can be given quickly. Not all of these "informal files" have warranted a record. Some are mentioned below for purposes of illustration.

1. Request for information on legal rights of a group of residents of a small town where a railroad crossing had been closed thereby isolating a segment of the community from the rest. Matter resolved by writing some letters.

2. Contact from a community organization providing credit counselling. Perceived public interest issue regarding tax discounting, consumer protection and debt collection practices. (Expected to develop into a "formal" file.)

3. Request from a private, volunteer corrections agency dealing with juvenile offenders regarding the provision of educational resources out of provincial funds. Dealt with by phone and letter rather quickly.

4. Assistance given to a group of workers not covered under labour legislations who wished to establish an association. Helped to draft a constitution and by-laws.

5. Advice to a women's rights organization regarding legal obligations and rights.

6. Preliminary consideration of a request from a group of prisoners to investigate the rights and obligations of parolees and the discretionary powers of parole supervisors.

In addition to serving as a "community resource" for information rather than formal representation, the PID fulfills its mandate by regularly monitoring legislative amendments as they are proposed. The purpose is to identify public interest issues that may become apparent. A portion of the staff lawyer's time is devoted to this activity.

"OUTREACH" PROGRAM

The effort of the PID to make its presence known in Manitoba communities has been named the "Outreach" program. Included within that designation are publicity efforts, including direct contact with community groups, public speaking engagements, and the writing of articles for community publications such as special interest magazines and newsletters.

In June of 1983 Mel Holley, PID paralegal, undertook a trip to several Northern Manitoba communities. He detailed his activities in a report submitted to the Department of Justice wherein he described some of the concerns of residents of Thompson, Snow Lake, Flin Flon, Moose Lake and The Pas. Community concerns were uncovered through interviews with local lawyers - including LAM staff - and community leaders. Problems were discovered relating to housing, transportation, medical services, education, day-care, consumer costs, concern for world peace, government and social services, the administration of justice and the status of Native people. In some instances one or more community groups could be identified as having a special interest in one or several of these public issues. In some cases the paralegal made direct contact with group members, and in those instances, as well as others, an "Outreach Package" was sent following his trip.

The "Outreach Package" contains a covering letter on LAM (PID) stationery announcing a "New Program for Group Legal Aid", a statement of the "Basic Goals and Objectives" of the PID, a summary entitled "Guidelines for Group Legal Aid" and excerpts

from the legislation dealing with group legal assistance.

The paralegal expressed some pessimism about the PID becoming active in the North unless it could establish an "ongoing presence". Subsequent experience has shown his pessimism to have been warranted. Some of the reasons for a general absence of PID activity in the North are as follows:

(a) There is a general distrust of urbanites including government officers (or organizations funded by governments) who are not part of the communities and who may be seen as "imposing" programs, however well-intentioned, upon Northern people.

(b) LAM staff, some of whom are in active contact with community groups, are not readily able to identify "public interest issues" and to link such issues with services offered by the Department.

(c) In absence of a PID office actually situated in the North, which may be impossible in any event, the Department lacks visibility and close personal contact with potential client groups.

(d) Many Native groups are already in receipt of Federal funds and would not therefore meet the eligibility requirements for group legal aid.

Few of these obstacles can be readily overcome. A seminar for LAM staff lawyers, educating them in identifying public interest issues and introducing them to the work of the PID, was put on by PID staff. As this aspect is but one of the series of factors limiting PID activity in Northern areas, it has had little effect in altering the situation.

It is difficult to resolve some of the "direct contact" activities of the PID with the ethical rules of the law profession prohibiting activities "designed primarily to attract legal business". This issue is discussed further below.

PART IV

REACTION AND GENERAL IMPACT

INTRODUCTION

In this Part the "impact" of the PID is assessed. In Part II major cases were described and their specific outcomes were examined. In addition, the impact of PID work upon client groups was determined and, in some cases, we made note of the degree of satisfaction expressed by client groups. Similarly, in Part III we reviewed the impact of "informal" as well as other PID activities. In this Part we take a broader view. Specifically, we examine the last of the series of "Focus Questions" introduced in Part I:

A. Has the operation of the PID "placed additional burdens on already strained judicial and administrative resources?"

B. Has the PID "encouraged unmeritorious litigation?"

In addition we canvas opinions regarding the general quality of PID representation.

Information forming the basis for this Part (as well as portions of Parts II and III) has come primarily from interviews and correspondence with groups and individuals as follows:

A. Representatives of client groups;

B. Several LAM Board members and former Board members including both lay-and lawyer-members and the current Chairperson;

C. Two deponents (potential expert witnesses) in a major case which did not come to trial;

D. A Defendant group (collectively and some individually);

E. Counsel for a utility whose applications were opposed by the PID in hearings before the Public Utility Board;

F. Co-counsel (private bar) in the Stony Mountain Double-Bunking Case;

G. Opposing counsel in some major cases;

H. Counsel (and his associate) for the Public Utilities Board;

I. Staff lawyers at LAM;

J. The Chief Executive Officer of The Law Society of Manitoba;

K. The Director of Legal Education for The Law Society;

L. All PID staff and former staff;

M. An expert witness for the PID in a Public Utilities Board hearing;

N. Some judges and members of the private bar on an informal basis.

Problems and issues mentioned in this Part in some degree repeat those identified in previous Parts. Major problems and issues introduced here and in earlier segments are discussed at greater length in Part V.

QUALITY OF WORK

Almost all respondents were highly complimentary of the quality of the work produced by the PID. They particularly praised the Director. Lawyers and representatives of client groups were unanimous in their approval. The Chief Executive Office of The Law Society of Manitoba wrote, "I view his [Peltz's] talents and expertise as being of the first order." Even lawyers who were otherwise critical of the PID endorsed this statement.

Client groups were particularly appreciative of the "educational" efforts of PID staff. They always felt they were kept informed of the progress of matters and that they were "in control". Options were presented in a clear and concise fashion and instructions were sought and followed in all but the most minor of circumstances. The staff has skill in working with groups (or aggregates) which is apparently unparalleled in the legal profession in Manitoba.

One respondent complained that the expertise developed within the PID is too much "trapped in Winnipeg", however. No suggestions were forthcoming to remedy this perceived problem and no client groups located out of Winnipeg expressed dissatisfaction in maintaining access with the PID.

The PID is also regarded as an important asset both to consumer organizations with whom the Department maintains contact and to the legal profession generally. Participation in legal education programmes is highly valued and the Director is regarded as uniquely

capable in certain areas of law. The Director of Legal Education for the Law Society of Manitoba remarked that he has noted an increase in an already superlative contribution from the PID Director to legal education programs. This may result from the fact that the PID Director can concentrate his efforts since the PID was established in June of 1982.

Similarly, a member of the private bar remarked that no private Manitoba law firm for "almost any amount of money" could furnish the quality of service offered by the PID. Respondents varied on whether they thought the PID was a "necessary" service, but they agreed that it was a legal resource for which no alternative exists in the province. Two lawyers with national experience even expressed the opinion that the service offered by the PID is unique in Canada. For example, opposing counsel in the "Double-Bunking" case regarded the dispute as a "good issue" (even though they were critical of some aspects of the conduct of the case) and an issue which, because of the presence of the PID, "could only have been litigated in Manitoba." Not only the Director, but the entire PID staff are generally regarded as competent, dedicated, and personally committed to providing high quality service.

Client groups generally reported a greater perception of "system fairness" as a result of their experience with the PID. The groups often came into contact with the PID after a period of intense frustration. Whether or not all of their goals and demands were ultimately met, they generally reported "feeling good" about "fighting for their rights". They believe that the political and legal systems are more fair than they had heretofore thought them

to be.

Similarly, most opposing counsel and counsel for the Public Utilities Board expressed the opinion that the "system" operates, if not with greater actual fairness, with more apparent fairness when the PID is present. Both real and apparent fairness are essential qualities of democratic institutions and therefore PID representation is welcomed.

Some respondents remarked that the quality of representation is not impaired, but limited by "insufficient" staffing. [The evaluator has been impressed by the quantity of work produced by so few people, as well as the quality.]

Another problem, perhaps related to quality, is the fact that funding for the PID is unstable. Since the PID cannot guarantee its existence beyond next March some client groups have been reluctant to commit themselves to litigation. Therefore, meritorious public interest issues may go without attention.

SOME CRITICISMS

In the course of interviews a number of critical issues were identified by respondents. Some of them are addressed more fully in Part V of this report. Some of them have already been alluded to in previous Parts.

1. Perceived Political Bias

A number of lawyers expressed the opinion that the PID showed an apparent if not real political bias. The PID Director and the current staff lawyer are identified with the provincial political party currently in power. The issues the PID takes on, it has sometimes been suggested, are issues of importance to the Government and only coincidentally to the client groups.

The evaluator could find no evidence of direct political manipulation. On the contrary, there is some evidence that the Government has in some instances been embarrassed. Government policies have frequently been challenged by the Department. In some major cases the Government has been a defendant. In one instance, consideration was given to adding a cabinet minister as a defendant in a court action. The minister was less than sanguine. It is presently conceivable that the PID will be representing a position in forthcoming litigation more closely aligned with that of the current provincial Opposition.

The problem of apparent political bias is somewhat related to the problem of "defining the client" as discussed below.

2. Defining the Client

In some cases, according to some observers, it has not been clear just who "the client" represented by the PID may be. For example, in representations on behalf of the Manitoba Society of Seniors ("MSS") the PID addressed general consumer issues, such as return on equity, and not issues peculiar to MSS members or even to senior citizens. To some it is the Public Utilities Board ("PUB") itself which "represents" consumers generally and intervenors are expected to express particularized concerns.

In other cases client groups have claimed to represent whole classes of consumers, for example, transit users, but have not - in the eyes of some - validated their claim to represent the interests of such large groups. In granting legal aid, it is said, LAM has not looked behind the claim to "representativeness" of some applicants. Some observers have suggested that close scrutiny is avoided so long as the issue involved is one which is of concern to Government. Again, while the claim to "representativeness" may be an issue worthy of further examination, the evaluator could find no evidence of any consistent political bias as suggested.

3. Financial Need

A third problem identified by respondents was that the apparent financial need on the part of applicant groups was sometimes in doubt. Rarely have even token contributions to costs been extracted. This has lead again to the criticism that the political importance of the issue outweighs the true financial need of applicant groups.

Financial criteria applied by LAM pursuant to statutory guidelines are indeed ambiguous. As such they must always leave open the possibility of criticism that a "hidden agenda" provides the "real" test of eligibility. While it may be possible to develop less ambiguous tests of eligibility it is unlikely that decisions on group eligibility can be made without a large measure of judgment and speculation. Adherence to the "priority scale" however insures that the principal beneficiaries are the needy.

4. Misallocation

Some, while generally supportive of PID activities, view them as a "drain" on a scarce resource: legal aid funds and staff time to assist impoverished clients on an individual basis.

The criticism rests on some doubtful assumptions. It is assumed, for example, that PID funding is "taken away from" funding for legal aid in general. It might just as validly be seen as a depletion of resources otherwise available for road-building, defence, day-care subsidies, civil service salaries, or any other government-funded activity. An assumption is also made of the importance of public interest issues and, in particular, those issues which have been addressed by the PID, in relation to individual legal needs. Is one more important than the other? Invariably, respondents who have raised the "depletion of scarce resources" argument follow up by identifying the "good issues" and the "bad issues" taken on by the PID. The critics are not at all consistent in their classification of issues. This goes to show that in the case of public interest funding, as in the case of practically any other government expenditure, what constitutes "waste" in the judgment of some will be welcomed as a worthy expenditure by others. It will always lie with governments to determine the balance.

5. "Overkill"

One of the purposes of public interest advocacy is to correct imbalances in the system - to afford representation to the otherwise unrepresented. This aim is considered especially important where the opponent is "big business" or "big government". In some instances, however, the opponent may be a "middle-level" power.

When the PID comes in on the side of the "underdog" the balance, it is suggested, rather than becoming equal, may be tipped in the opposite direction. Unfairness replaces unfairness.

Most PID cases have involved opposing governments or public utilities. In the Amaranth School case (supra) the defendant school board (the "Board") was a rural, subordinate entity with a limited tax base. In the view of the Board and its counsel it was forced to settle in spite of the alleged superior legal merits of its own position because it could not afford to become involved in protracted litigation.

Whether or not the Amaranth School case in fact provides an example of tipping the balance in the opposite direction, the possibility exists that the PID can, in some cases, overwhelm opposing forces so as to create an unfair situation. In the section on "Quality of Work" above it was suggested that the PID is regarded as a potent legal resource, unique in Manitoba if not in Canada. If this is so, one lawyer suggested, then perhaps its opponents should, if they do not have access to resources roughly equal to the PID, also receive government funding.

6. Use of "Non-Legal" Tactics

As noted in the description (Part II) of the activities in which the PID assisted client groups, sometimes assistance was given (upon request) to pursue "non-legal" routes to settlement such as publicity campaigns, public demonstrations, write-in campaigns, and similar activities. Some have suggested the PID ought not engage in such "community organization" activities but instead

should confine itself to more traditional legal work. Problems in this regard are discussed in Part V of this report.

7. "Localized" Causes

Some observers have suggested that a "public interest issue" to be such ought not to be "localized". It should have wide social importance and affect a relatively large number of citizens.

In particular the Brandon Transit case and the Headingley PUB intervention (re charges for local telephone calls) were thought by some to be "too localized." Others, however, saw the broader issues to be "rights to public services" and "prisoners' rights" and found no quarrel with these cases.

Those who criticized the cases cited in the preceding paragraph as being "too localized" did, significantly, not cite the Home Orderly Services case (Part II, supra) as being too localized. The latter case probably affected fewer people, but people who enjoy considerable public sympathy.

8. Conflicting "Low Income" Interests

Finally, it has been suggested that the legislation and policy that affords legal assistance to low income groups wishing to pursue public interest issues ignores the prospect that, on some issues, different groups of low income people may be opposite in interest. A bridge may, for example, re-vitalize one low income neighbourhood while it decimates another. Which, if any, side should the PID represent if asked to do so?

OVERBURDENING

The only suggestion that the PID may be creating a "strain" on administrative or judicial resources came from one lawyer who suggested that PUB proceedings have now become more "adversarial", thus increasing costs to applicants with, in his view, no corresponding public benefit. The same lawyer suggests that it is reasonable to attempt to make changes to "make the system more fair", but he would prefer to do so in a more economical manner such as by providing an Ombudsman with expanded legal authority.

Since relatively few cases handled by the PID have actually gone to trial or have even involved triable issues, it is unlikely that the Department could be said to have "overburdened" the courts or administrative resources.

UNMERITORIOUS LITIGATION

"Legal merit" is a matter of professional judgment as much in the area of public interest law as in any other area. As such, lawyers will often disagree. While some lawyers expressed some doubts about some cases handled by the PID, none suggested that the Department generally promotes unmeritorious litigation.

Many public interest cases rest upon constitutional arguments and constitutional law is presently quite unsettled in Canada. Assessments as to legal merit are therefore often extremely difficult to make.

One LAM Board member suggested that written assessments of legal merit presented to the Board are usually too brief for the Board to make intelligent decisions. In retrospect he questions the "social importance" of some of the cases taken on by the PID.

In general, the notion that public funding of public interest advocacy encouraged unmeritorious litigation has found little empirical support in the circumstances reviewed in this report. The PID does not seem prone to taking on hopeless causes. On the contrary, results have generally been positive.

PART V

CONCLUSIONS AND RECOMMENDATIONS

In this final Part we cover both the specific and the general. In previous portions we identified some specific problems and issues. We return to them and consider possible resolutions. In this respect we examine problems touching upon "Case Selection" as well as problems of "Case Conduct".

In the concluding section of this Part we turn to the general issue of program effectiveness and the value and advisability of maintaining the present structure of the PID.

CASE SELECTION

1. Defining the Public Interest

In Part I we attempted, with little success, to give operational precision to the term "public interest". It was observed that the concept is essentially a normative one. This observation was illustrated over and over again in the course of interviews conducted by the evaluator in conjunction with this project. Practically every respondent agreed that there is a perceivable "public interest" and that "public interest advocacy" is a valid legal enterprise. But many respondents cited at least one case handled by the PID that was, in the respondent's view, "not <u>really</u> a public interest case." There is little consistency, however. No single case or class of cases handled by the PID is unanimously thought by respondents to fall outside the "public interest" category. Prisoners' rights cases evoke least support, but some respondents were quite adamant that prisoners' rights issues are important public interest matters.

We therefore recommend that LAM and the PID adopt a broad definition of "public interest issues" to include:

(a) efforts to democratize participation in legal and administrative processes, and

(b) efforts addressed to the "overall good of the community".

No greater precision is possible. Judgment must continue to be exercised in each case.

2. Localized versus Generalized Cases

An apparently restricted issue can always be classified into a more inclusive, abstracted category. Therefore, one can see the provision of home orderly services as a matter of "the rights of the disabled", telephone services for prisoners as a matter of "prisoners' rights", and transit service for a single city as a matter of "citizens' rights to public services." Such generalization is what our law is all about. Stare decisis, the "sacred principle" of English Law, demands that discrete events be analyzed in terms of their broader implications. We cannot easily dismiss the cases just cited as "too restricted" in their nature. An apparently minor matter can be an important test case. Nevertheless, practical decisions must be made and grand principles may not be helpful. Resources are limited. We suggest that, when allocative choices must be made so as to refuse some cases and accept others, "localized" cases should be rejected in favour of more obviously "general" ones. There is no reason to believe that this has not been policy to date, albeit unwritten.

3. "Representativeness" of Client Groups

In the case of class actions the representative character of plaintiffs is determined by legal rules and by the courts. No such restrictive rules apply when client groups apply for group legal aid or when they appear before administrative tribunals. When an organization claims to represent a larger aggregate, such as all consumers of a public service, it has not been the policy of LAM rigorously to scrutinize the claim. This has led to some criticism, as in the Brandon Transit case (Part II, supra).

We therefore recommend that consideration be given by LAM to a policy that would require an applicant group to give some evidence to substantiate a claim of "representativeness". Criteria would vary in individual circumstances but might include evidence of a membership campaign, open membership policies, or substantial support from an existing membership. We would warn, however, that requirements can easily become too restrictive, especially where the public interest involves an inherently "unorganizable" aggregate (see Part III, "Brief on Social Assistance", supra). In many instances the "tip of the iceberg" will be sufficient.

4. Political Neutrality

In Part IV we discussed the criticism that the PID is an "instrument of government" or that it is not politically neutral as it allegedly should be. One respondent even went so far as to suggest that PID cases be strictly limited to "consumer" and "minority rights" issues, or issues which have obvious, broad, public support. (Similar limits are observed, for example, by the Public Interest Advocacy Centre in Ontario.) While a change such as this might contribute to a public image of political neutrality the essential character of the PID would dramatically change. The PID is founded upon a set of priorities consistent with a legal aid mandate: to assist the poor. The PID is fundamentally different from some other public interest law agencies in that it gives <u>first</u> priority to poverty law rather than to general public issues. To the extent that the interests of the poor conflict with the interests of powerful groups in the community the PID will be seen to take a "political" position.

Our conclusion is that the Department's "political" image stems from its mandate and not from government manipulation or the "political bias" of those in control of the selection procedures. Bias, if it exists, is structural rather than personal. It cannot be eliminated so long as the PID pursues its present objectives. Review of applications by the LAM Board affords a degree of objectivity and a check on overt attempts at political manipulation.

5. Financial Need

A number of respondents questioned whether some client groups served were truly in financial need. The Board has not demanded that client or potential client organizations undertake special internal fund-raising campaigns to finance litigation. In some instances client organizations have made contributions to costs, however.

Since the PID is a unique resource in Manitoba available only upon issuance of a legal aid certificate, failure of a group to meet financial eligibility requirements could mean that some meritorious issues wanting attention could not be pursued at all. It may be, therefore, that LAM has not sought to apply rigorous means tests.

Considering the high costs of litigation, and the apparent limited means of the client groups served in the evaluation period, it does not appear to the evaluator that PID resources are being offered to groups for whom funding alternatives exist. We therefore make no recommendation for changes in policy in this area.

6. Priority Scaling

The PID is unique among public interest law organizations. Roberts (1984, 62) has identified five Canadian "models" of public interest law services. The PID fits none of them. One model is "pro bono services" - an organization locates volunteer lawyers. A second is public interest law carried on as an adjunct service within the "judicare" type of legal aid. The third, similar to the second in nature as well as in its inherent limitations, is public interest law carried on in the context of general legal aid centres. A fourth model is the "targetted" legal service clinic such as those founded under the Ontario Legal Aid Plan to assist tenants, the disabled or children. The fifth Canadian model identified by Roberts is the "public interest law firm" that practices only in areas of broad, public support.

Roberts is most critical of the effectiveness of the first three models mentioned: pro bono services, judicare, and practice within general legal aid centres. He is most complimentary of the specialized clinics and the general public law firms.

While Roberts (1984, 64) includes the PID within the "Legal Service Clinic" category, he ignores the essential difference between the PID and clinics: the clinics have more circumscribed mandates. While the clinics serve highly identifiable target groups the PID follows a set of priorities that direct its activities to an aggregate homogenous only in terms of financial status. It is not even clear that the "poor people" served by the PID are identical to those defined by LAM policy or by some

other criteria. (For a general discussion of the "gap" between the "legal aid poor" and the "Statistics Canada poor" see generally Sloan, 1984.)

The PID has become heavily involved in "prisoners' rights" cases. Some critics have claimed that such cases do not fit PID priorities because prisoners are not "typical" of poor people. (Neither are the physically handicapped, but PID representation of them does not generally attract such criticism.)

There are two ways in which to meet the criticism of prisoner representation other than by refusing service to prisoners' groups. One would be to refine the priority scale so that issues common to poor people <u>in general</u> gain top priority. Issues affecting people who are "coincidentally" poor would come farther down the scale.

Another way to meet the criticism is through public education. The legal aid scheme itself purports to meet the legal needs of the financially disadvantaged without presuming that the poor are <u>typically</u> law violators or otherwise in need of legal services. In point of fact, regardless of rates of criminal law violation, low income people stand a greater risk of imprisonment than the general population (Greenaway, 1980). Poverty and imprisonment are therefore inextricably linked. "Correctional law" is part and parcel of "poverty law".

In a sense it is even more consistent for the PID as a champion of the poor to become involved in correctional law than to represent the handicapped. In the case of prisoners it is arguable that their incarceration stems at least in part from their socio-economic status. For the physically handicapped the relationship is reversed: their financial status derives from their disability (or the public reaction to it).

On balance it would appear to be preferable for the PID to suffer the possibility of public misunderstanding of representation of unpopular groups than to institute a complex set of priority rankings that ultimately would not likely alter case selection significantly. Public legal education is a possible antidote to criticism, but the PID has limited resources. Any extensive effort in this regard is better left to other agencies.

7. Conflicting Low Income Public Interests

In the preceding section it was pointed out that low income people constitute a heterogeneous aggregate. Groups of equally impoverished people may be opposite in interest on some issues. The hypothetical case suggested is the situation where the building of a bridge may revitalize one low income community at the same time as it destroys another.

There appears to be general agreement among persons interviewed by the evaluator that the PID is a unique and potent legal resource. If two high priority, low income groups are opposite in interest and both require a legal resource, which of them, if any, should

receive PID representation?

Having the PID represent the first group to make application hardly seems fair. Issuing a legal aid certificate for private representation to only one group would not solve the problem since it is generally thought that no private firm has the expertise to compare with the PID. We therefore suggests that in such instances the PID should not represent either side. Assistance may however be given for private representation of groups opposite in interest. Any policy in this respect should be developed by LAM prior to a problem arising.

CASE CONDUCT

1. Solicitor Work

This evaluation leads to the conclusion that the PID is a valuable and scarce legal resource. Public interest law requires concentrated work, experienced personnel, and expertise. There is more than enough work to keep the PID very busy.

In the Logan Community case (see Part II, supra) it was observed that the PID was primarily providing "solicitor work" during the evaluation period. There are good reasons why it and not other lawyers should do so. PID staff are familiar with the Logan Community Development Corporation, its officers and employees, and the neighbourhood in which it operates. Solicitor-client rapport has built up over time. Nonetheless, if the PID is to operate as a specialized legal service consideration should be given to a policy that would terminate the client relationship

at a point when special expertise is no longer needed. Therefore, we recommend that, as much as possible, the resources of the PID should be conserved for use where no alternative to its service exists. Solicitor work in particular (except in the prospect of litigation) should be assigned to other LAM lawyers or to the private bar.

2. Fair Balance

It was suggested by several respondents that the Amaranth School case was atypical among PID matters in that it was not a "David-and-Goliath" case. On the contrary, it was suggested, access to the PID allowed the plaintiff to overwhelm the defendant school board creating an unfair situation. Without accepting or rejecting this analysis of the Amaranth School case, it is hypothetically possible for the PID to create "reverse unfairness" in certain circumstances. In such circumstances consideration can be given to funding both sides of the dispute. It may be that no change in policy is needed to do so since anyone is at liberty to apply for assistance. Each application is considered on its own merits. However, we suggest that policy be reviewed so as to avoid possible unfairness to "middle-level" defendants who may not technically be eligible for legal aid to groups.

3. Educational Efforts

In the discussion of the "Outreach" program (see Part III) we described efforts undertaken to make the availability of the PID known to Manitobans who may be in need of the special service the Department offers. Included among those efforts were direct

approaches to potential client organizations. The issue raised was whether the PID had inadvertently breached professional ethical rules proscribing the promotion of litigation.

First, it can be pointed out that a potential client organization need not apply for or be granted assistance specifically from the PID. In theory at least private counsel could be assigned. By educating Manitobans about the availability of legal aid to groups concerned with public interest issues the PID is not, at least in this technical sense, promoting its own "business". The distinction is "technical" since the PID is the only effective resource available in many instances.

The PID is, of course, governed by the ethical rules of conduct of the law profession. The Canadian Bar Association (1974) Code of Professional Conduct has been adopted by the Law Society of Manitoba. Chapter XIII of the Code states (at 51) the following rule:

> Lawyers should make legal services available to the public in an efficient and convenient manner which will command respect and confidence and by means which are compatible with the integrity, independence and effectiveness of the profession.

Further, in the "commentary" on the rule, the Code says (at 53),

> The lawyer must not, directly or indirectly, do or permit any act or thing to be done which can reasonably be regarded as professional touting or as designed primarily to attract legal business.

On the other hand, a lawyer may properly make his/her availability known in "acceptable" manner. The point at which permissible "advertising" ends and "professional touting" begins is not

always clear to lawyers in traditional practice. In a public interest practice, particularly when government-funded, the problem sometimes takes on added proportions. Collectivities may need assistance - legal assistance - in developing an appreciation of their collective problem. The ethical rules against solicitation may have been generated without any contemplation of government-operated legal aid schemes, let alone public interest practice within such schemes.

We could not locate Canadian cases on point. The U. S. position substantially qualifies the general rule against solicitation, however. The U. S. Supreme Court in In re Edna Smith Primus, 436 U.S. 412 (1978) considered the case of a lawyer who was disciplined for "solicitation in violation of the Canons of Ethics" by sending a letter to a potential litigant offering, on behalf of the American Civil Liberties Union (the "ACLU"), free legal assistance. The ACLU was actively seeking a test case for litigation. The sanctioned lawyer cooperated with the ACLU without fee. In reversing the disciplinary decision the U.S. Supreme Court held that the activities engaged in fell within constitutional guarantees of freedom of expression and freedom of association. The court distinguished (at 423) Ohralik v. Ohio State Bar Association, 436 U.S. 447 where a lawyer had been disciplined for communicating "a purely commercial offer" of legal assistance. Primus was not "in-person solicitation for pecuniary gain" and the lawyer was not presenting an offer "...predicated on entitlement to a share of any monetary recovery" (at 423). Moreover, the court observed (at 423):

> ...her actions were undertaken to express personal political beliefs and to advance the civil liberties objectives of the ACLU, rather than to derive financial gain.

The Primus case reaffirmed the previous decision by the same court in N.A.A.C.P. v. Button, 371 U.S. 415 which held that "solicitation" by staff lawyers of the National Association for the Advancement of Colored People was similarly protected by constitutional guarantees.

A broad interpretation of the U.S. position is that solicitation requires a "commercial" element. A narrower interpretation requires, in addition to the absence of commercialism, that the alleged solicitation be in pursuit of personal political beliefs.

Arguably the U.S. position is now law in Canada as a result of provisions in the new Charter of Rights (which are similar to the U.S. Bill of Rights) with respect to freedoms of speech and association. If that is so, then the "Outreach" activities of the PID are arguably proper given that they are without commercial motivation. If, in addition, such activities must be politically motivated, then PID "solicitation" may still contravene ethical rules.

We suggest that the issue of allowable limits of public education/ solicitation be the subject of further research perhaps in consultation with the Law Society of Manitoba ("LSM"). In specific instances where there is some doubt the PID should, where practicable, request "advance rulings" from the LSM Disciplinary Committee.

4. "Non-Legal" Assistance

Another thorny problem raised in this report and requiring further research and clarification is the extent to which a lawyer or his/her agent may go to assist a client to engage in extra-legal activities - actions not part of traditional legal practice but rather in the nature of "community organization."

The most ambiguous of all professional disciplinary charges is that of "conduct unbecoming a member of the profession." To what extent does it become a member of the law profession or his/her agent to assist directly in political demonstrations and other demonstrative forms of political pressure to settle a dispute? (The evaluator consulted with Professor Alvin Esau who teaches a course in Legal Ethics at the University of Manitoba Law School and who has been a Bencher of the LSM and a member of its Disciplinary Committee. He advised that the issue is a vast and unsettled one and one requiring extensive research.) In the face of such ambiguity we suggest that the PID, where practicable, seek advance rulings from the LSM Disciplinary Committee where its community organization activities could possibly be seen to run afoul of ethical standards. Further research should be conducted, possibly in consultation with the LSM.

GENERAL PROGRAM EFFECTIVENESS

Roberts (1984, 66) in his general review of public interest advocacy in Canada makes the following statement:

> The Public Interest Department in Manitoba represents an efficient and economical model for permitting increased advocacy within a provincial legal service program, without the establishment of new clinics for targetted groups. By taking referrals from offices around the province, it is able to provide services throughout the entire region....[I]t is also able to develop the necessary skills and knowledge to conduct advocacy and test litigation and to pass these back to local offices through workshops and materials. Finally, because it is specifically mandated to conduct advocacy its effectiveness will not [be] reduced by the more immediate needs of individual cases.

While Roberts may have exaggerated the "regional" coverage of the PID, his summary statement is otherwise borne out by the findings of this evaluation. His comments (at 61) with regard to the value of specialization are likewise apt:

> It is clear from the success of the public interest law firms and more recently of projects such as...Manitoba's Public Interest Department that the most effective law reform and participation in the administrative process will occur where lawyers have the time to specialize and to familiarize themselves with the concerns of their clients.

1. Advantages of Inclusion in LAM

The LAM clinics have immediate contact with the general population served by the PID. The clinics provide an effective referral route. Accessibility is not hampered to any great extent by locating the PID centrally.

By including the PID in the general administrative structure of LAM costs are minimized.

Finally, inclusion in the LAM structure allows an independent check upon case selection. An attempt is made at fair and objective selection according to standardized criteria.

The present structure is an effective and cost-efficient way of extending the legal aid mandate.

2. Disadvantages of Present Structure

Atcheson and her colleagues (1984) have recently surveyed Canadian advocacy groups. The most prominent among them, they suggest, are the Canadian Civil Liberties Association ("CCLA"), the Consumers' Association of Canada, the Public Interest Advocacy Centre, the Canadian Environmental Law Association, and the Advocacy Resource Centre for the Handicapped. The authors review (at 83-102) the structure and funding of each of these organizations and point out that all of them except the CCLA are dependent on government funds.

> Some groups view this close dependency on governmental funding as disquieting because they fear governmental control of their activities.

The PID is similarly dependent upon governmental benevolence and is therefore highly vulnerable.

Political vulnerability has several dysfunctional effects. First, staff morale is undermined by relatively short-term funding. Renewals of term contracts cannot be decided early enough to dispell the disquieting prospect of impending unemployment. The feelings are exacerbated by perceived absence of public support for some activities and the necessity of challenging governmental policies in some cases.

Second, there is evidence that some client groups may be deterred from pursuing meritorious public interest issues by the fact that their only effective legal resource could disappear on short notice. While the client would not necessarily experience a financial loss by abandoning its cause, litigation requires an expenditure of psychological and physical energy that can only be sustained by hope of positive results. Clients are naturally reluctant to see their energies wasted.

Finally, since governments or governmental bodies are most frequently the object of legal opposition, the PID finds itself in a position of conflict of interest. The PID lawyer has a professional duty to his/her clients, as stated in the Code of Professional Ethics (at 27) "fearlessly to raise every issue, advance every argument, and ask every question...which he thinks will help his client's case" (emphasis added). But political vulnerability must surely give rise to pause if not outright fear in some instances. Effective public interest advocacy, if it does not require the PID to bite the hand that feeds it, surely requires frequent annoying nibbles. It is to the credit of the PID lawyers that they seem never to have allowed fear of political repercussion to have interfered with their duty to their clients. Virtue may be characteristic of the incumbents personally rather than the structure. They may "do the right thing" in spite of rather than because of the operational context.

3. Alternative Structures

With all its disadvantages the present structure is preferable

to a return to the days before the PID came into existence. If a more effective structure cannot be devised we would not hesitate to recommend that the present one be maintained. Disadvantages could be minimized if the PID were made more independent of government. A change toward greater independence would without doubt cost more than the present arrangement. But means could be found to maintain the advantage of the LAM referral network even if the PID were separate from LAM. Case selection procedures could still be controlled by a screening body.

An independent PID could perhaps be established in a manner similar to the Ombudsman in Manitoba who reports directly to the Legislature and who is protected from governmental interference (see The Ombudsman Act, c. O-45 CCSM).

Alternatively, the PID could operate under the governance of an independent foundation (as does the Public Interest Advocacy Centre in British Columbia) with funding from a variety of sources.

Greatest independence (at greatest cost) might come from the endowment of a Public Interest Law Institute, perhaps attached to a university. Such an Institute could include educational objectives as well public interest law practice.

Other models for a politically independent PID might be devised given further research and reflection. Certainly one would want to examine U.S. models carefully. In absence of a willingness to incur greater costs to improve it, however, the present structure

is of sufficient value that consideration should be given to continued funding.

SUMMARY OF RECOMMENDATIONS AND CONCLUSIONS

1. LAM and the PID should adopt a broad definition of "public interest issues" to include efforts to democratize legal and administrative processes, and efforts addressed to the overall good of the community. No more precision is possible.

2. When allocative choices must be made, localized cases should be rejected in favour of more general ones.

3. Where a claim to "representativeness" is made by an applicant group, some evidence should be required to substantiate the claim. Requirements should not be too restrictive.

4. "Political bias" in case selection is structural rather than intended.

5. The evaluator was not left with the impression that client groups served would be able to afford privately retained counsel.

6. The present "priority scale" should be retained in spite of public misunderstanding of its application; specifically, prisoners' rights issues should continue to be categorized as an aspect of "poverty law" in view of research which substantiates the relationship between social class and incarceration.

7. When low income groups opposite in interest apply for legal aid to pursue the same public interest issue, the PID should represent neither side, but assistance for private representation may be given to both sides.

8. As much as possible, the specialized resources of the PID should be used where no alternative exists; specifically, solicitor work, except in the prospect of litigation, should be assigned to other lawyers.

9. Policy should be reviewed to avoid possible "reverse unfairness" when the PID opposes institutions with limited access to legal resources.

10. Further research should be conducted on the ethical limits of client solicitation as they affect the PID, and advance rulings from the LSM should be obtained in instances of ethical doubt.

11. Further research should be conducted on the ethical limits of PID "community organization" activities, and advance rulings from the LSM should be obtained in instances of ethical doubt.

12. The PID as presently structured represents an efficient and economical model for public interest advocacy.

13. The present structure has as its chief disadvantage political vulnerability; consideration should be given to alternative models that would create greater independence.

14. In absence of a willingness to pay the costs necessary for a less politically vulnerable PID, consideration should be given to continued funding of the PID as presently structured.

APPENDICES

A. Checklist

B. Legal Aid Budget for PID

C. Department of Justice Budget for PID

D. Contact Organizations

E. "Legal Aid for Groups"

APPENDIX "A"

CHECKLIST OF POINTS TO COVER ON INTERVIEWS WITH CLIENT GROUPS

I. CHARACTERISTICS OF THE GROUP

A. How many members?
B. Requirements for membership?
C. What is it that binds the group together - common problems, culture?
D. Have the group characteristics changed as the case has developed?
E. Does the group have a continuing existence - what will happen once the issue is resolved?

II. ACCESS

A. How did you become aware of the existence of the Public Interest Department?
B. At what point did you decide to seek legal assistance?
C. Were you ever approached by the PID to use their services?

III. LEGAL COMPETENCE

A. Have members of your group had prior experience in dealing with legal matters? (Level of prior awareness and skill.)

IV. APPROPRIATENESS OF SERVICES PROVIDED

A. Were you satisfied with the services provided by the PID staff?
B. Did the matter develop as you expected or as you had been told to expect?
C. Did you ever feel that the PID staff "took over" and that you were either out of control or not adequately kept "in the picture?"
D. Did the PID staff provide services other than legal services (e.g. mounting publicity campaigns, etc.)? Did you suggest this or did they?

V. SKILLS DEVELOPMENT

A. Has the PID spent any time in "educating" you about the law as it affects your group?
B. Is your group, as a result of this experience, better able to deal with the problems that it may face in the future? How so?
C. Did the PID staff ever take the time to train members of your group in techniques of working on your problems?

VI. FEELINGS ABOUT LAW AND DEMOCRATIC PROCESS

A. Do you feel that people can solve their problems by getting together and pushing for change?
B. Do you feel differently about this than you did before you got into this matter?

VII. GENERAL CONCEPT OF PUBLICLY FUNDED PUBLIC INTEREST LAW DEPARTMENT

A. The PID was established on an experimental basis. Would you recommend that it continue? Why?

B. What changes, if any, would you suggest to the authorities who fund and operate the PID?

APPENDIX "B"

THE LEGAL AID SERVICES SOCIETY OF MANITOBA

Public Interest Department
April 1, 1984 to March 31, 1985
(with 1983/84 Vote for Comparison)

	1984/85	1983/84
Expert Witnesses and Consultants Fees	$ 20,000	-
File Disbursements	1,000	-
Meetings and Seminars	500	-
Salaries and Benefits*	76,900	121,900
.ravel	3,000	-
TOTAL (EXHIBIT A)	$101,400	$121,900

*Note: Provincial Asking Budget refers only to Salaries and Benefits for Director and Secretary.

APPENDIX "C"

Appended
to the Agreement between
the Department of Justice, Canada and
the Legal Aid Services Society of Manitoba

BUDGET
(1984 - 1985)

BUDGET ITEM:	
Salary and Benefits	
One Lawyer	$33,614.89
One Paralegal	25,345.46
Employee Benefits	1,950.00
Law Society Fees	1,400.00
Health and Education Levy	900.00
Total Salary and Benefits	$63,210.35
Disbursements and Fees	
On major files for which above Lawyer is responsible	15,000.00
Travel	
Lawyer and Paralegal	5,000.00
GRAND TOTAL	$83,210.35

The Contribution of the Department of Justice will be limited to the lesser of $75,000.00 or the actual and approved expenditures.

APPENDIX "D"

MAILING LIST

Independent Living Resource Centre
502 - 280 Smith Street
R3C 1K2
947-0194 Attention: Henry Enns

Manitoba Anti-Poverty Organization
641 St. Matthews Avenue
R3G 0G6
786-3323 Attention: Olga Foltz

Manitoba League of the Physically Handicapped
402 - 280 Smith Street
R3C 1K2
943-6099 Attention: David Martin

Housing Concerns Group
c/o Doug Martindale
Stella Mission
470 Flora Avenue
R2W 2B1
586-8137

Manitoba Society of Seniors
1102 - 211 Portage Avenue
R3B 2A2
942-3147 Attention: Carol Robinson

Manitoba Association for Child Birth
and Family Education
890 Carter Avenue
R3M 2E2
475-1865

West Central Food Buyers Club
641 St. Matthews Avenue
R3G 0G6

Inmate Council
c/o Headingley Correctional Institution
Box 130
WINNIPEG, Manitoba
R0H 0J0

Rossbrook House
658 Ross Avenue
R3A 0M1
783-7101 Attention: Sister O'Riley

Stella Mission
470 Flora Avenue
R2W 2B1
586-8137 Attention: Doug Martindale

Consumers Association of Canada
c/o Wendy Barker
9th Floor, 294 Portage Avenue
R3C 0B9
944-9388

Open Circle
202 - 818 Portage Avenue
R3G 0N4
772-0726

Idea Centre
418 Wardlaw Avenue
R3L 0L7
475-4159

Manitoba Committee on Wife Abuse
777 Portage Avenue
R3G 3L1
774-1794 Attention: Cathy Hiller

Mennonite Central Committee (Manitoba)
1483 Pembina Highway
R3T 2C6
475-3550

Citizen Advocacy (Manitoba)
809 - 259 Portage Avenue
R3B 2A9
947-1247

Community Education Development Association
545 Alexander Avenue
R3A 0P1
774-2408

Unemployed Help Centre
606 - 213 Notre Dame Avenue
R3B 0X9
942-6556

Children's Home of Winnipeg
400 - 777 Portage Avenue
R3G 3L1
786-7051 Attention: Keith Cooper

Logan Community Committee
437 Henry Avenue
R3A 0T3
943-6230 Attention: Helen Schultes

Community Consumer Credit Counselling
702 - 504 Main Street
R3B 1B7
944-9704 Attention: Milton

Winnipeg Labour Council
106 - 570 Portage Avenue
R3C 3L7
775-2978

Manitoba Federation of Labour
570 Portage Avenue
R3C 3L7
775-4575

Occupational Health Centre
98 Sherbrook Street
R3C 2B3
786-5881 Attention: Lisa Donner

Women's Employment Counselling Centre
503 - 352 Donald Street
R3B 2H7
943-0473 Attention: Shelley Neil

Winnipeg Education Centre
15 Chester Street
R2L 1W6
668-8160 Attention: Greg Sellinger

C.O.P.O.H.
926 - 294 Portage Avenue
R3C 0B9
947-0303 Attention: Al

Manitoba Federation of the Visually Handicapped
1000 Paris Building, 259 Portage Avenue
R3B 2A9
942-5895

Manitoba Society For Austic Children
c/o 250 Campbell Street
R3N 1B5
489-8517 (evenings)

Age and Opportunity Centre Inc.
304 - 323 Portage Avenue
R3B 2C1
947-1276

Agappe Table
175 Young Street
R3C 1Y8
786-2370

Nor'West Co-Op Health and Social Service Centre Inc.
103 - 61 Tyndall Avenue
R2X 2T4
633-5955

Women's Health Clinic Inc.
304 - 414 Graham Avenue
R3C 0L8
947-1517

Inter Faith Immigration Council
641 St. Matthews Avenue
R3G 0C6
942-3939

Native Women's Transition Centre
367 Selkirk Avenue
R2W 2M3
589-1859

Indian & Metis Friendship Centre
465 Alexander Avenue
R3A 0N7
943-1501

Lynn Lake Friendship Centre Inc.
Box 460
625 Gordon Avenue
LYNN LAKE, Manitoba
R0B 0W0
356-2445

Portage la Prairie Friendship Centre
21 Royal Road, South
PORTAGE LA PRAIRIE, Manitoba
R1N 3C5
239-6333

Selkirk Friendship Centre
425 Eveline Street
SELKIRK, Manitoba
R1A 2J5
482-7563

The Pas Friendship Centre
81 Edwards
Box 2638
THE PAS, Manitoba
R9A 1M3
623-6459

First Nations Confederacy
274 Garry Street
R3C 1H5
944-8245

Manitoba Metis Federation
203 - 310 Broadway Avenue
R3C 0S6
942-8304

Urban Indian Association
650 Burrows Avenue
R2W 2A8
586-8561

Coalition for Reproductive Choice
Box 51, Station L
WINNIPEG
R3H 0Z4
775-7774

Manitoba Action Committee on the Status of Women
Room 224 - 388 Donald Street
R3B 2J2
942-2000

Peter Aitchison
Consumer Help Organization of Manitoba
614 Patricia Avenue
R3T 3A6
269-0533

Boris Steiman
Age & Opportunity Centre Inc.
304 - 323 Portage Avenue
R3B 2C1
947-1276

Judy Birch
Women's Building
5 - 730 Alexander Avenue
R3E 1H9
783-7889

Dennis Champagne
Business of Living
508 Portage Avenue
R3C 0G2
786-5961

Larry Tallman
Winnipeg Tenants Union
2 - 195 Furby Street
R3C 2A6

Winnipeg Co-Ordinating Committee for Disarmament
c/o Lynn McKee
320 Lipton Street
R3G 2H1

Committee of Concerned Citizens of Manitoba
Box 667
Lac du Bonnet, Manitoba
ROE 1A0

Philippine Association of Manitoba
P.O. Box 1325
Winnipeg

Federation of Philipino Workers
c/o 2002 Burrows Avenue
Winnipeg R2R 0Y8

Free Vietnamese Association of Manitoba
c/o Van Ba Neuyn
401 - 344 Cumberland Avenue
Winnipeg R3B 1T3

Korean Association of Manitoba
c/o J. Kooh
104 Lake Park Drive
Winnipeg R2J 3A8

Lao Association of Manitoba
c/o Boun Nhong Thongvan Kahm
686 Victoria Street
Winnipeg

Manitoba Japanese Canadian Citizen's Association
c/o F.R. Kaipa
710 Notre Dame Avenue
Winnipeg R3E 0L7

Assiniboine Community College Students Association
1430 Victoria Avenue, E.
BRANDON R7A 2A9

Brandon University Students Union
270 - 18th Street
BRANDON R7A 6A9

Dakota Ojibway Tribal Council
702 Douglas Street
BRANDON R7A 5V2

Manitoba League of the Physically Handicapped
220 - 8th Street
BRANDON R7A 3X3

Deborah Thom
Thompson Crisis Centre
1 - 55 Selkirk Avenue
THOMPSON R8N 0M5

Lena Cook
Keewatin Tribal Council
145 Evergreen Place
THOMPSON

Manitoba Metis Federation
55 Selkirk Avenue
THOMPSON R8N 0M5

Ma-mow-wee-tak Friendship Centre
122 Hemlock Crescent
THOMPSON R8N 0R6

Manitoba League of the Physically Handicapped
315 - 39 Nickel Road
THOMPSON R8N 0Y5

Manitoba Metis Federation
143 Fischer Avenue
THE PAS R9A 0K2

The Pas Committee for Women in Crisis Inc.
Box 3779
THE PAS R9A 1S4

The Pas Friendship Centre
81 Edwards Avenue
THE PAS R9A 0H8

Flin Flon Committee for Women and Children in Crisis Inc.
130 Green Street
FLIN FLON R8A 0P9

Operation Dismantle
c/o Russell McLelland
521 South Main Street
FLIN FLON R8A 1G8

Metis Women's Association
Moose Lake Local
c/o Gloria Whitford
General Delivery
Moose Lake, Manitoba R0B 0Y0

APPENDIX "E"

LEGAL AID FOR GROUPS

Legal Aid in Manitoba is available to groups as well as individuals. Under legislative amendments approved in the summer of 1982, it was confirmed that organizations could apply for legal assistance, without charge or with a partial charge, in certain circumstances.

There is no guaranteed right to legal aid except in serious criminal cases. In other matters, all aspects of the applicant's case are considered and a decision is made by the senior staff of Legal Aid Manitoba. Similarly, with group applications for legal aid, all the circumstances are considered and policy guidelines established by the Board of Directors are applied.

Requests for "formal" legal representation or advice are dealt with by the Executive Director or the Board of Directors itself. For example, all court actions would be considered "formal" matters. It should be remembered, however, that lawyers in each of the seven community law centres around the Province provide informal help to groups and organizations. This kind of work includes speaking engagements, educational seminars and courses, research and preparation of briefs or reform proposals, and sometimes voluntary participation on community Boards of Directors or Committees. Requests for informal assistance of this kind may be made to the supervising attorney of the law centre, or to the Director of the Public Interest Department.

GUIDELINES FOR GROUP LEGAL AID

The Legal Aid Act states that assistance may be given to a group in any matter that involves an issue of public interest. Therefore, groups

may apply for help in a wide variety of cases. However, since the basic purpose of the Legal Aid plan in Manitoba is to provide legal services to people of low and moderate income, preference may be given to groups composed of, or representing the interests of, low income people.

Each application is dealt with on its own merits and any group is entitled to apply.

The following guidelines are used:

(1) Need

First, a group must show that it lacks the financial or other resources necessary to obtain legal representation.

Where the organization itself has funds available to hire a lawyer, it is extremely unlikely that legal aid would be granted.

The incomes of individual members may or may not affect the eligibility of the group. Recent amendments to the Act state that a group may be eligible for legal aid even though some or all of its members would not be eligible as individuals. Such groups may receive legal aid

(a) if paying a lawyer's fees would work a serious hardship on the group and seriously hamper its activities, or,

(b) if the group could not pay the legal fees which would result from the case.

Sometimes the need for legal representation can be met in other ways. Another government agency or private body may be willing to provide legal counsel in the case. It may be that sufficient funds can be raised, quickly and easily enough, so that the group is able to obtain effective representation on its own. Legal Aid considers all such factors in assessing the group's need for assistance.

(2) Merit

Legal Aid will consider the facts of the case and the applicable legal principles, in order to determine whether or not there is merit to the case the group wishes to take.

Often, questions of public policy will be raised by a group application. The new legislation, for example refers specifically to consumer or environmental issues. Legal Aid will not pass judgement on the political or moral issues involved in the case, except to insist that there must be at least an arguable public policy position.

(3) Aims, objects and activities of the group

As stated earlier, Legal Aid Manitoba exists to provide service to poor people in Manitoba and to improve their condition wherever possible. As a result, the highest priority in group representation goes to those organizations whose work provides benefit to low income people exclusively. Lesser importance is attached to groups which assist poor people only as part of the over-all public.

The history and current status of a group are both important. Characteristics such as size, membership requirements, and credibility in the community are also considered. Once again, however, each application is considered individually.

(4) Effect of the proposed legal action

The same principle applies here as in paragraph 3 above: the highest priority goes to legal actions which provide the maximum benefit to low income people. Nevertheless, Legal Aid will still consider cases which affect the public at large. Many environmental and consumer matters fall into this category.

Note that a group could be in financial need and have a sound legal argument, but if the effect of the case would be to harm the interests of low income people, Legal Aid could refuse the case on this basis.

(5) Other considerations

Since each case is reviewed separately, any other relevant considerations will be taken into account.

If one side in a dispute has already received legal aid, fairness may suggest that the other party should also be assisted.

Sometimes a rare opportunity arises to test a legal principle of public importance. This may be a factor in favor of granting legal aid to group.

Some cases necessarily involve tremendous expenditures of time and money. Legal Aid would consider whether its existing budget could support the action; certain restrictions might have to be placed on Legal Aid's contribution to the case.

Finally, as in every application for legal aid, compassionate, humanitarian or other special considerations will always be examined. Flexibility is essential.

(6) Application forms

Groups may apply for legal aid on the usual form, but the lawyer or other person taking the application must supply a background report covering the factors listed above.

If requested, a meeting can be arranged with the Executive Director or the Board of Directors to discuss particular aspects of an application or refusal of legal aid. The Legal Aid Act provides that the final appeal on a legal aid application goes to the Board of Directors.

For further information, contact any one of the Legal Aid offices throughout the Province of Manitoba.

REFERENCES

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